

## Dismissal of Professor Denis Rancourt

### Notes from the Arbitration Hearings

Professor of Physics Denis Rancourt was dismissed from the University of Ottawa in 2009 on an allegation of misconduct for attributing A+ grades to all of his students in an upper-year physics course. Professor Rancourt was an outspoken and controversial critic of the university administration and teacher of the popular “activism course” (Science and Society). The university’s reason for dismissing the professor was widely seen as a pretext to remove a politically dissident member of the faculty.<sup>1</sup> Professor Rancourt grieved his dismissal through his union, the Association of Professors of the University of Ottawa (APUO). Hearings in the labour law arbitration of his grievance began in May 2011.

From September 2010 to May 2012, I was an elected member of the University of Ottawa Senate, representing graduate students in the Faculties of Science, Engineering, Medicine, and Health Sciences. I followed Professor Rancourt’s dismissal and arbitration closely, brought matters of concern regarding the arbitration process to the Senate and to the campus community, and wrote reports about the arbitration on the blog [\*Student’s-Eye View\*](#).

I felt it was necessary to follow the arbitration process because it exposed important information about the institutional behaviour of the University. In disclosures and in the open-court arbitration, documents were produced by the Dean of Science that confirmed that the University’s Legal Counsel hired a student spy to gather information about Professor Rancourt’s political activity, including his off-campus talks. The University’s lawyers cross-examined the professor on his writings and presentations about the political philosophy of anarchism as part of an accusation that he incited violence and was a danger to students and society. The University opened the arbitration by arguing that the professor’s post-dismissal conduct justified dismissing him in the first place. The positions and actions of the University over the course of the arbitration were documented in blog and media reports that are linked-to below in this PDF document.

The parties in the arbitration were the Employer (the University of Ottawa, or “the University”) and the Union (the APUO). Lawyer Lynn Harnden was lead counsel representing the University, and lawyer Sean McGee was lead counsel representing the Union. Twenty-eight days of hearings took place sporadically over a period of two years and ended in June 2013. Arbitrator Claude H. Foisy’s award was released in January 2014 and is available at: <http://www.apuo.ca/wp-content/uploads/2012/07/UNIVERSITY-OF-OTTAWA-RANCOURT-Jan-27-14.pdf>

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<sup>1</sup> For example, see the Letters of Support sections on <http://rancourt.academicfreedom.ca>

There was no audio recording of the arbitration hearings (by consent between the parties) and video recording was prohibited by the arbitrator. Therefore, there is no official record of what was said during the hearings. However, beginning with Professor Rancourt's examination-in-chief by the Union lawyer, I took detailed typed notes using my laptop of everything I observed during the final 12 days of hearings. My typed notes include part of Professor Rancourt's examination-in-chief, the cross-examination of Professor Rancourt by Mr. Harnden, examination-in-chief and cross-examination of witness Philippe Marchand, and the closing arguments of the University and Union.

The hearings were bilingual; I chose to type what I heard in French immediately into English, according to my own translation. The transcript-notes are unedited, in that the only processing I have done is to run each day's notes through a spell-checker to correct typos. The symbol (?) indicates my uncertainty in the spelling of a word or name, and (( )) or ... indicates something inaudible or missed due to the speaker speaking quickly. I note that the speed of speech was generally slow, due to the Arbitrator's decision to write by hand much of what was said and the delay added by simultaneous interpretation from French to English, which was provided for Mr. Harnden.

My typed notes for the final 12 days of hearings in the arbitration of Professor Denis Rancourt are provided below, following a section containing links to on-line documentation about the arbitration up to May 17, 2012 (Day 15). The notes for each hearing day are "bookmarked" in this PDF, so that each day's notes can be accessed by clicking the corresponding bookmark using a PDF viewer.

There were 160 exhibits entered into evidence in the arbitration hearings. The exhibits are available to download as a zipped folder of PDF files at the following link: [https://archive.org/details/ExhibitsFromDenisRancourtDismissalArbitration\\_201412](https://archive.org/details/ExhibitsFromDenisRancourtDismissalArbitration_201412). Exhibits are referred to throughout my typed notes as they were introduced by the parties' lawyers and identified by the arbitrator.

It is my hope that these notes, exhibits, and collected reports will be of use to researchers, students, and other members of the community concerned with the institutional behaviour of universities in Canada and elsewhere.

Joseph Hickey, *B.Sc., M.Sc.*  
Former Member of Senate  
University of Ottawa

December 2014  
Ottawa, Canada

## Documentation about Rancourt Dismissal Arbitration – General

### **TVO interview by Professor Rancourt on *The Agenda with Steve Paikin***

*The Agenda with Steve Paikin*. April 14, 2009. Denis Rancourt.

<https://www.youtube.com/watch?v=I0HZDN6xXZ8>

### **Statement by Professor Rancourt**

*AcademicFreedom.ca*. June 2011. This is what targeting a dissident tenured professor looks like in Canada: Harm suffered by Denis Rancourt at the University of Ottawa.

<http://rancourt.academicfreedom.ca/Data/Documents/2011-06=Harm-suffered-by-Denis-Rancourt-at-the-University-of-Ottawa-1.pdf>

### **Statement by the APUO on the Arbitration Decision**

*APUO.ca*. March 10, 2014. Denis Rancourt arbitration.

<http://www.apuo.ca/denis-rancourt-arbitration/>

### **Collected Blog Reports**

*U of O Watch* blog, label “Rancourt Dismissal” (all articles about dismissal):

<http://uofowatch.blogspot.ca/search/label/Rancourt%20dismissal>

*Student’s-Eye View* blog, label “Rancourt Arbitration” (all articles about arbitration):

<http://studentseyeview.wordpress.com/category/rancourt-arbitration/>

*Liberté Académique* blog, label “Arbitrage” (all articles about arbitration):

<http://liberteacademique.wordpress.com/category/arbitrage/>

## Documentation about Rancourt Dismissal Arbitration – Hearing Days 1-15

### **May 2, 2011 – Preliminary matters (Day 1)**

- YouTube video: “Professor Denis Rancourt fired for Post-dismissal conduct”:  
<https://www.youtube.com/watch?v=6iQKYdlzvPM&feature=youtu.be>
- YouTube video: “U. of O.’s Lynn Harden wants to Block Reporting of Rancourt case”:  
<https://www.youtube.com/watch?v=lACKCoijxeQ>
- YouTube video: “Press Conference: Denis Rancourt vs. University of Ottawa”:  
<https://www.youtube.com/watch?v=LBZ7VSEG-Ic>
- YouTube video: “Supporters Speak on Case of Denis Rancourt vs. U. of O.”:  
<https://www.youtube.com/watch?v=6tmkgkqZY7M>
- *U of O Watch* blog report: <http://uofowatch.blogspot.ca/2011/05/rancourt-case-arbitration-hearing-day-1.html>

### **October 12, 2011 – Preliminary motion re: video recording (Day 2)**

- Written submission from University to Arbitrator: Media access and Rancourt's blog:  
<http://rancourt.academicfreedom.ca/arbitration-dismissal/2011-10-03=Lynn-Harnden-to-Arbitrator-Foisy.pdf>
- Written submission from Union to Arbitrator: Media access and Rancourt's blog:  
<http://rancourt.academicfreedom.ca/arbitration-dismissal/2011-10-07-received=Letter-to-Claude-Foisy.pdf>
- *U of O Watch* blog report:  
<http://uofowatch.blogspot.ca/2011/10/rancourt-wrongful-dismissal-case-report.html>
- YouTube video: “Arbitrator Claude Foisy Bans Cameras from U. of O. Tenure Suit”:  
<https://www.youtube.com/watch?v=j4VOz2eTx5U>
- Written submissions on video access during hearings by Dr. Steve Noble:  
[http://www.academia.edu/1024947/Allowing\\_Audio-Visual\\_Recording\\_to\\_the\\_Wrongful\\_Dismissal\\_Arbitration\\_Grievance\\_of\\_Denis\\_Rancourt](http://www.academia.edu/1024947/Allowing_Audio-Visual_Recording_to_the_Wrongful_Dismissal_Arbitration_Grievance_of_Denis_Rancourt)
- Written submissions on video access during hearings by Dr. Denis Rancourt:  
<http://rancourt.academicfreedom.ca/Data/arbitration/2011-10-18=DGRtoArbitratorFoisy=FOLLOW-UP-SUBMISSION-ON-VIDEO.pdf>
- Letter from student senator to President Allan Rock re: video transparency:  
<http://studentseyeview.wordpress.com/2011/10/15/letter-to-allan-rock-please-act-to-protect-video-transparency-at-university-of-ottawa/>

- Arbitrator Foisy's Interim Award (ruling) on video reporting and document confidentiality:  
<http://rancourt.academicfreedom.ca/arbitration-dismissal/2011-10-27-received=Award-of-Claude-Foisy.pdf>

### **October 31, 2011 – University's opening statement (Day 3)**

- University (lawyer Lynn Harnden) opening statement:  
<http://rancourt.academicfreedom.ca/arbitration-dismissal/2011-10-31=lawyer-Lynn-Harnden-opening-statement.PDF>
- *U of O Watch* blog report: <http://uofowatch.blogspot.ca/2011/10/u-of-o-witch-hunt-against-rancourt-in.html>
- YouTube video: "Rancourt Arbitration: Student Media Interviews and 'Intimidation'":  
[https://www.youtube.com/watch?v=S\\_MibU1y8r0](https://www.youtube.com/watch?v=S_MibU1y8r0)
- Report by Dr. Steve Noble:  
[http://www.academia.edu/1072262/Dr.\\_Rancourts\\_Wrongful\\_Dismissal\\_Arbitration\\_Hearing\\_October\\_31\\_2011](http://www.academia.edu/1072262/Dr._Rancourts_Wrongful_Dismissal_Arbitration_Hearing_October_31_2011)

### **November 1, 2011 – Continuation of opening statements (Day 4)**

- University opening statement: <http://uofowatch.blogspot.ca/2011/11/day-4-hearing-into-wrongful-dismissal.html>
- YouTube video: "Prof. Rancourt vs. U of O: Students are Welcome":  
[https://www.youtube.com/watch?v=\\_gy93\\_weGGk](https://www.youtube.com/watch?v=_gy93_weGGk)
- YouTube video: "Professor Denis Rancourt Challenges U of O to Release 'War-Room' E-mails": <https://www.youtube.com/watch?v=pfYzz0rUJdM>
- Report by Dr. Steve Noble:  
[http://www.academia.edu/1070691/Denis\\_Rancourt\\_Wrongful\\_Dismissal\\_Hearing\\_Day\\_November\\_1\\_2011](http://www.academia.edu/1070691/Denis_Rancourt_Wrongful_Dismissal_Hearing_Day_November_1_2011)

### **January 23-24, 2012 – University's witnesses, students Phillip Vinten and Daniel Pohl (Days 5-6)**

- *U of O Watch* report: <http://uofowatch.blogspot.ca/2012/02/tribunal-hearing-days-5-6-7-in.html>
- *Student's-Eye View* report: <http://studentseyeview.wordpress.com/2012/01/28/physics-students-subpoenaed-to-labour-arbitration-board-about-a-marks/>

**February 21, 2012 – University’s main witness, Dean of Science André E. Lalonde (Day 7)**

- *U of O Watch* report: <http://uofowatch.blogspot.ca/2012/02/tribunal-hearing-days-5-6-7-in.html>

**April 10-13, 2012 and May 14-17, 2012 – Continuation of examination-and-chief and cross-examination of Dean André E. Lalonde (Days 8-15)**

- *U of O Watch* report: <http://uofowatch.blogspot.ca/2012/05/hearings-into-dismissal-of-rancourt.html>
- *Student’s-Eye View* report about U of O’s hiring of student spy to gather information about Professor Rancourt: <http://studentseyeview.wordpress.com/2012/05/14/u-of-o-spy-files-released/>
- *Student’s-Eye View* report about Dean Lalonde’s testimony re: security concerns and lockdown of Professor Rancourt’s laboratory: <http://studentseyeview.wordpress.com/2012/05/15/andre-e-lalonde-explains-lab-lockout-physics-dept/>
- *Student’s-Eye View* report about Dean Lalonde’s testimony re: President Allan Rock’s involvement in the firing of Professor Rancourt: <http://studentseyeview.wordpress.com/2012/05/16/allan-rocks-plan-to-get-a-tenured-professor-off-campus/>

## Documentation about Rancourt Dismissal Arbitration – Hearing Days 17-28

My typed notes for the final days of arbitration hearings follow.<sup>2</sup>

Table 1 is a legend showing how speakers are identified in the notes. Table 2 shows the order and subject of the notes, by hearing day. Copies of media articles that appeared on June 11, 25, and 26 are included before the notes for the corresponding hearing day.

**Table 1: Legend of speakers appearing in hearing notes**

Abbreviation	Position and Name
A	Arbitrator Claude H. Foisy
H	Lawyer for the University, Lynn Harnden
D	Lawyer for the University, Celine Delorme
M	Lawyer for the Union, Sean McGee
R	Grievor, Professor Denis Rancourt
P	Witness, Philippe Marchand

**Table 2: Organization of hearing notes and media articles**

Date (Hearing Day)	Pg. #	Description
2013-05-14 (17)	9	Examination-in-chief of R
2013-05-15 (18)	16	Cross-examination of R
2013-05-21 (19)	32	Cross-examination of R
2013-05-22 (20)	61	Cross-examination of R
2013-05-23 (21)	97	Cross-examination of R
2013-06-05 (22)	131	Examination-in-chief of P; Cross-examination of P
2013-06-06 (23)	149	Cross-examination of P; Re-examination of P; Cross-examination of R
2013-06-11 (24)	188	Spears, Tony. 2011. Ottawa U had ‘real worries’ about activism class. <i>Ottawa Sun</i> . June 11.
2013-06-11 (24)	190	Butler, Don. 2011. University of Ottawa accuses ex-professor Denis Rancourt of inciting violence. <i>Ottawa Citizen</i> . June 11.
2013-06-11 (24)	193	Sandor, Alison. 2011. Former Ottawa U prof fights to have tenure restored. <i>CFRA News</i> . June 11.
2013-06-11 (24)	194	Cross-examination of R
2013-06-12 (25)	227	Cross-examination of R

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<sup>2</sup> I did not take notes for Day 16 (May 13, 2013).

2013-06-13 (26)	263	Cross-examination of R; Re-examination of R
2013-06-25 (27)	288	Butler, Don. 2011. Lawyers spar over University of Ottawa's dismissal of Denis Rancourt. <i>Ottawa Citizen</i> . June 25.
2013-06-25 (27)	291	Closing statements of the University (opening); Closing statements of the Union (response)
2013-06-26 (28)	319	Butler, Don. 2011. Lawyer defends A+ marks handed out by Denis Rancourt as lengthy hearing ends. <i>Ottawa Citizen</i> . June 26.
2013-06-26 (28)	322	Closing statements of the Union (response); Closing statements of the University (reply)



Tuesday, May 14, 2013

*(Continuation of APUO witness Rancourt's examination in chief)*

*(Begin at 10:00)*

**McGee (M):** We had discussions yesterday, trying to resolve some issues. Want to let you know what parties have agreed to. Main issue – in context of any correspondence that surrounded delivery of examinations. UofO is not, in context of this hearing, making an issue of failure to deliver exams. There is an issue that the APUO has identified about the fact that the UofO, the deciders of termination, did not review the exams. The UofO and APUO will both, I presume, make arguments on that point. What we have agreed is that, prior to the decision being made to terminate Prof. Rancourt, APUO had made clear its view that those making the decision should review the examinations. As you suggested yesterday, that probably saves us a significant amount of time going back and forth through various exchanges, because they probably wouldn't help you in making the ultimate decision in this case.

**Rancourt (R):** I have some questions in order to understand what has just been said.

*(APUO break in foyer, return at 10:06)*

**M:** So we spoke yesterday about your firing from the University. When you received the notice of termination, were you at that point (??)?

**R:** I know that I was blocked from my laboratory for a long time, and that afterwards I was given access after extended negotiations.

**M:** So we'll go back to – I'll pull up a document – Friday, Nov. XX, 2008. How did you know that there was a problem with the laboratory.

**R:** I was at lunch and I received a phone call from a student who told me that the lab was locked. I put my key in the lock and realized that the key did not work. So I didn't yet realize what was going on – I only knew that my key didn't work and this confirmed what the student said, that there had been an intrusion. You have to understand that I was in charge of this lab, there were students and employees, there were radioactive components, I was responsible for safety vis-à-vis radioactive and chemical materials – I was the legally responsible person – I passed the tests, I was licensed, the University made this clear to me that I was the person responsible. My telephone number was on the door so that I could be called in case of emergency. I was the one who would come in off-hours if there was a problem, if there was an instrument that wasn't working, etc. The University sent me letters informing me I was legally responsible for the laboratory. The procedure for any request regarding the lab was to contact me – that includes technicians... – so it was a shock that the key did not work – it was a surprise and a shock – if anyone was going to make the smallest change the laboratory – even the schedule for washing the floors was under my control. So to find myself suddenly, without being forewarned

in any way, to find out that the key didn't work... I knocked on the door, and I heard that there were noises inside. This concerned me greatly, so I knocked very loudly on the door. There was silence, on the other side of the door, then someone said "who is there?". They opened the door, they tried to close the door, I put my foot in the door, they couldn't close the door. At this point I had not seen the person, I could not see how the person was dressed, etc. It was a woman's voice. Keeping my foot in the door allowed me to continue speaking. She identified herself as a member of the Security Personnel of the UofO (Protection Services). I said, "is there anyone else in the laboratory?" she said "yes" and she named the other person. I asked "what service is that person from" and I asked "what are you doing?". She said, "we're changing the security measures in the lab".

**Arbitrator (A):**       *(Asks question about security measures).*

**R:**                       She didn't specify what she was changing, it could have been locks... My union rep came to the location and said he was going to call the APUO office. Eventually we reached Mr. Sean McGee, that is, yourself, in order to help understand what was happening.

**M:**                       In order to complete this story, why did you put your foot in the door?

**R:**                       My position was, I wanted to understand who had the authority to do what they were doing, and who was going above my authority.

**M:**                       ...

**R:**                       It took a long time – hours – for me to understand who had taken control of the lab. It took a long time. I stayed there for hours, in negotiation with you, trying to understand what was going on.

**M:**                       ...

**R:**                       ...

**A:**                       *(While the students were getting their things)* Was it still necessary to have your foot in the door?

**R:**                       Yes it was. It was my responsibility to find out who was in there. Also, I could not easily remove my foot – the person inside was pushing on the door. I couldn't easily remove my foot. At this time, students asked me, and I asked myself, how we could have access to obtain the materials in the lab – there were books, other materials. So I negotiated with many people, so that I would have the right to access the lab to retrieve things that belonged to the students and other items. The students had made a list of things they wanted and where they were located. So I entered and took the things I wanted. I left the lab with the understanding that we would continue to clarify what had happened and why the lab had been blocked off.

**M:** So at this stage, in Nov. 2008, outside of your responsibility in the lab and as prof., i.e. in the class, did you have other responsibilities?

**R:** I was still responsible for other things in MacDonald Hall. I was on several administrative committees. I don't remember which ones, as that changed often. For example, I was the person responsible for the chemistry lab in the physics building – a shared lab.

**M:** In this chemistry lab, were there materials that could have presented a danger to people in the lab?

**R:** Yes. There were powerful solvents, flammable materials. The usual machines in a chemistry lab – machines that use fire and high temperatures, mechanical pumps, oils, machines, many things.

**M:** Did the UofO remove the responsibility re: this lab?

**R:** No, they did not inform me that they had removed my responsibility over this lab.

**M:** At the time of your firing, did you have access to the general campus of the UofO?

**R:** No.

**M:** Why?

**R:** Because on December 10, 2008, I was called by the VP Academic. At the time it was Mr. Robert Major. He communicated with me directly and said "Mr. Rancourt you should come to a meeting at a certain place and time...". The University, i.e. the VP Academic, refused to give the reason for this meeting to my union. They simply affirmed that I must be at this meeting. So, when I arrived alone at this meeting, I had no idea what was the purpose of this meeting. At this point, I had regained access to the lab at the end of Nov. or beginning of Dec. The radioactive materials had been removed. The locks on the safe were cut... So there was this meeting – the conclusion – present were the VP Academic, Robert Major, the Dean of Science, Andre Lalonde, and the VP Governance at the time, who was Nathalie Des Rosiers. So these 3 people were present. The conclusions, at the end, were: 1) Message of Dean, in the form of a letter – the letter that recommended my termination to the Board of Governors. They didn't ask me to read it there, but told me that the letter was in the envelope and what its message was. The Dean told me the APUO received the same letter. 2) The VP Academic had another envelope with another letter, and gave it to me saying here's another letter that informs you that you are administratively suspended, with salary, but being completely – I did not have permission to come onto campus – the only way you may come onto campus is by asking permission from Security and being accompanied by security. He told me there were security guards at the door who were there to escort me off campus. So from that moment on I was barred from campus. I

then had discussions with my union to understand the nature of this suspension, e.g., did I have the right to continue to interact with my students to advance their thesis research. Did I have the right to access my scientific funding... I had a list of questions, which the University responded to.

**M:** ...

**R:** Of course I had the right to interact with my students, but absolutely not on campus. Of course I had the right to continue my research, but not on campus, not in my office. And if I remember correctly, I had the right to continue to spend my research funds, e.g. if I wanted to go to a conference, etc.

**M:** ...

**R:** The barring from campus had a big effect on me, because I had a radio show on campus each week. One of my students needed my help in front of their computer – the University would not allow me to meet the student on campus. I hosted a public discussion session each Friday night on campus.

**M:** Where was this discussion, exactly?

**R:** In the physics building. I had offered this for several years. It was public and popular. It had different names, but at the end I believe it was called Cinema Politica.

**M:** In addition to the discussion, were there films?

**R:** Yes. There were films or presenters. They essentially made me understand that none of my on-campus activities would be permitted – only to meet my union. One exception was that a graduate student requested I be present at his thesis defence. It was permitted, but the police escorted me and it was obvious to everyone that the police escorted me. The student made a special request to the VP Academic that I could accompany him to the student's bar to celebrate his successful defence and the VP accorded the permission to do this, and again I was accompanied by the police to this bar.

**M:** ...

**R:** They never explained the reason for the academic suspension.

**A:** For me the question was specific – why did you have to be accompanied by the police. And your answer is, simply because you were under academic suspension.

**M:** Did the University ever ask the Ottawa Police to accompany you?

**R:** Two times – first, when lab was locked. During these negotiations, the Ottawa Police were there. Secondly, several months later, I had exchanges with University to

insist that I must continue my radio show and public discussion session. So I did come to Cinema Politica once, a few months later, and on this occasion they did have the police come onto campus to arrest me and escort me off campus.

**M:** What was that interaction with the police like?

**R:** I told them I was a Full Professor, I had the right to be there, etc. They handcuffed me and brought me to the police station.

**M:** Following this instance, were you allowed to continue your radio show on campus?

**R:** Yes, following this instance there was a certain easing off – security told me they would not interfere with my coming onto campus. So – the radio show I don't remember, but Cinema Politica I did every following week, with no problem, in the same room, the physics auditorium. At the time I didn't know why, but later I found out it was an internal decision to allow me access. So, the radio show, I don't remember when I re-continued it. This was in January/February, so several weeks later... During this discussion, one of the things that I was told, by letter, was – “Mr. Rancourt, you must understand that this suspension lasts up until the point you will be terminated, after that it will end”. This was one of the many things they told me during this negotiation. At the time, I didn't understand why this suspension was in effect, why I was not permitted to help my students when they needed it, why they removed my radio show from me, so I continued to negotiate via direct exchange with the VP who was implicated. So eventually, security informed me they would no longer interfere.

*(Break 15 minutes)*

*(Continue at 11:15)*

**M:** With the arrest, were there any criminal charges?

**R:** No. The arrest was under the civil charge of Trespass. The trespass in question was never pursued. The Crown said that he would not pursue that charge.

**M:** I would like to ask you a more general question. You understood from the suspension letter that the University considered you to be a dangerous person?

**R:** Yes, I understood that the University had taken that position.

**M:** What is your response to that allegation?

**R:** My response is that it is completely and utterly false. I am someone who promotes non-violent civil action. I encourage, by way of my own actions, actions which... to take action by speech. I have opinions regarding all kinds of social change. I have opinions about historical events and current events. I believe in action through public discourse and face-to-face

discourse. This is what I do. How else can I describe it? There are several manners of pressure which are legitimate, including demonstrations, letters to the editor, letters to decision makers, radio, which I used a lot, public forums – all the legitimate forms of public pressure in a democracy – and, I understand that one can morally have an opinion that one can have an opinion that goes beyond that. For example, someone needs medicine and the pharmacy is closed, they need access – there are many examples of that in society. There is none of that... But at the same time, I understand an aboriginal person who has his territory stolen and who blocks a highway – I understand the personal psychology in this – that's the difference. I often had the opportunity to explain to people in public what the appropriate method would be, and I often put the emphasis on how to make such methods efficient – and I read and wrote about the history of social change. Recently, I published a book on these topics. There is no lack of room for criticism of my political opinions... I take the same approach towards the dominant pedagogical system – to criticize very severely those methods that attempt to feed material piecemeal to students – and what I call “grading” – I criticize it very severely in public... I criticize it while promoting a student-centred method. What I understand is that the University interprets this criticism to mean that I neglect my professorial responsibilities – and I consider this to be a lack of discernment on the part of the University – there is a significant difference between severely criticizing an approach, in a way that can be even provocative, and what I do in class. I am in control in class, I am the one who manages the approach in class. I take this very seriously. So, on the one hand, I fiercely criticizes those approaches that, in my opinion, waste the talents of students, and on the other hand, I am professionally responsible for managing my class following professional ethics and my job description. These two things are completely distinct in my mind: the first my political contribution – I speak on TV, on the radio, everywhere, publicly when I do presentations, I wrote a book. This is my political contribution. So, on the one hand, I am a political being. On the other hand, I am a professor in a class – sometimes I am responsible for 200 students... so I want to accomplish the most I possibly can with these students to optimize their learning and development. I take this extremely seriously – there is nothing – I will not permit interference with my professional independence. Therefore, if a Dean wants to come and interfere with what I am doing, I will ask him/her to tell me why and we will discuss it. But I will not allow a unfettered interference in what I consider to be my professional responsibility.

**M:** What impact does academic freedom have on this?

**R:** For me, academic freedom – which I have discussed at length with experts and colleagues – for me, academic freedom is central to the life of a professional – on the one hand, it entails the ability to control the pedagogical method and everything that goes on in class. I will name 3 things that I consider to fall within the domain of academic freedom: 1) Teaching. Professional independence in the class, which has a long history and is reflected in our collective agreement very clearly, at least as it was in my time; 2) Independence in research and choice of research methods. This means, among other things, that one cannot be restricted to a research area defined by one's employer. So I have the right to be interdisciplinary in my research. E.g., in

my case, I began in physics and I did chemistry, environmental science, I received large grants in those areas. I was invited to conferences in vastly different areas – my research was broad and I insist that it be broad. 3) Very important as well – my political contribution in the Canadian political system. My expression of my political opinions and my freedom to influence the policies of societies. Political in the broad sense – discourse. My contribution as an agent who attempts to influence policy and attitudes in society. It's everything that touches on my political opinion and how I express it. This includes severe criticism, including that of my employer. That is academic freedom. I do not have the right to disobey my employer, but I have the right to criticize my employer, its behaviour, and its choices. Academic freedom, to me, goes beyond the right to express one's opinion, but extends to the right to attempt to influence things. It can be used in the goal of changing society. Academic freedom includes this and is not restricted to an academic language or being polite. This restriction does not exist. The person who expresses his or her opinion may use language in order to have an effect. That is a choice of communication. I understand that my employer does not appreciate the criticisms that I make, but that is part of my academic freedom.

**M:** Did you give a mark or marks to a student or students who did not deserve it?

**R:** Absolutely not. That would be inconsistent with my entire approach, because my approach is to protect my independence in the classroom in order to control what happens in the classroom. And this control is maintained and decided on by me. I try to create an environment in which the student can best succeed. But I'm the one who gives feedback, insists that students must be present and contribute authentically. And I insist on having a full interaction with the students. That is the basis of my method.

**M:** Those are all my questions.

**Harnden (H):** Without attributing any fault to my friend, I understood that we would not begin cross-examination until next week. We can start tomorrow, but not this afternoon.

**M:** I'm quite content to adjourn until tomorrow.

Wednesday, May 15, 2013

*(9:52, cross-examination of Rancourt by UofO lawyer Lynn Harnden has begun)*

**H:** Do you describe yourself as an anarchist?

**R:** No. I used to but given the confusion I have experienced in explaining it these last few years, I do not anymore.

**H:** Would it be accurate to say that you're drawn to the principles of an anarchist, and that you attempt to incorporate them into your approach to life?

**R:** No, that's false. Seeing the benefits of a political philosophy is different from believing they can be applied into one's daily life in an immediate way – believing in a broad political philosophy, that it can be integrated into one's life in a real context. Honestly, I do not feel animated or directed by that political theory. I have a great respect for the political philosophy and for the thinkers who have brought it into being. I can criticize it. I can talk about it. But I do not think it applies directly to our lives in society. There are certainly some elements, as in any theory, that may be beneficial. For example, the notion of liberty, contribution to society, these basic notions are found in many political theories. For example, I could do a presentation saying we need to inject anarchism into our pedagogy. That's something I've done. I've given several presentations at pedagogical conferences with similar titles – and this means, to look for elements of the theory that may improve pedagogy.

**H:** I appreciate the clarification that you're now disassociating yourself from that label of Anarchist, and it's unfortunate *MacLean's* must have misquoted you or mislabelled you – but I want to be clear – is this a new approach, is this something that you've moved away from...

**R:** No, I would say there's been a continuous movement – I would say it's the general approach but – I don't know – have I always had exactly the same perspective on the use of this word, etc.? That's a difficult question. We could look at my CV and look at the presentations I've done where I used the term Anarchism – we could look at it and see how I used it and what I would have meant. We could do that exercise. My point of view has not changed...

**H:** What about the label of an "Activist Teacher" do you embrace that as who you purport to be?

**R:** It's the title of one of my blogs, so it's a title that I use to signify that I could change things. I would say yes, I think it's a correct term that describes the way in which I actively work to change things, and that my approach is direct and provocative. But the problem that I have with such a question is the underlying substance of the question – you ask "do you embrace?" and you have your interpretation of the term "Activist Teacher", and so you project a



meaning to that term. So you're trying to direct me. What do you mean by the term "embrace"? It's the title of my blog, so obviously I'm ok with that title.

**H:** You recall when Dean Lalonde testified, he identified a period of time when you, under his observation, shifted towards more of an activist approach. He actually identified the timing as just after you finished the sedimentation project. Do you remember this testimony?

**R:** Not exactly, but I recall there was testimony about that...

**A:** What project?

**H:** Sedimentation. Do you agree that there was a point in time when you began gravitating towards a more "activist" approach to teaching?

**R:** I would say it was very gradual – so if we agree on "activist approach" to mean looking for pedagogical techniques which are more profound and go beyond the traditional approaches – if that's what we mean and we agree that's what we mean – this work on my part was long and gradual, over the majority of my career. I would say it began when I developed – I believe there was a change towards broader exploration – I perfected my presentations and demonstrations (with physics instruments) in class – at first they were just improvements on the traditional approaches, but later I tried new things. For example, I was the one who introduced a new technique in the physics department called "Peer Instruction", which was adopted by several of my colleagues – this was a technique developed at Harvard in physics teaching. I brought this to the physics dept. and it was adopted by 2 of my colleagues, as well as myself. That was very early in my career. So I always was looking for new techniques like these, testing them, and trying to improve them. But I think we have to make a distinction between my physics courses and my environmental science courses, and the new course Science in Society. For example, the list that I gave the other day showed these courses – some of them were physics courses, some environmental science courses, and then there was Science in Society. So we have to distinguish the pedagogical approaches in these different courses. In the Physics and Environment course – I created this course 15 years ago – it was my course – in creating this course, I began using invited speakers who came into each class. Most of them were not scientists. So I did this for 10 years, from the beginning of this course when it was created. This formed part of the development of the optimal pedagogical method for the course in question. To return to your question – I do not agree with the Dean's testimony if it meant that there was a sudden change in my pedagogical approach, because in my view there was a long process of changes over the course of my career. The Dean was aware of my different pedagogical approaches – we discussed often, he was aware that it was not sudden.

**H:** Well, if you recall, the Dean actually attributed your interest in, let's say, activist issues, following a period in time he called your "poetry phase". Do you recall your "poetry phase"?

**R:** Yes, I remember being interested in poetry.

**M:** Did the Dean actually say “poetry phase”?

**H:** No it’s a term I invented to capture Prof. Rancourt’s testimony. To be fair to you Prof. Rancourt, I will read the Dean’s testimony. He said you actually submitted poems as part of your annual work report. Do you remember this?

**R:** I remember he spoke about that and said I submitted what would have been a book of poetry to the then-Dean of Science. I remember the testimony, but I do not remember giving in a book of poetry in the context of an annual work report. I don’t believe this is an accurate fact, but I would like to be informed if you could correct me on this fact – I do not remember this – just to clarify the facts.

**H:** How long was this period when you had this “dominant” interest in poetry?

**R:** There was never a time when my dominant interest was poetry, so I do not think that this question is just.

**H:** And, to make sure I understand correctly, you would take issue with Dean Lalonde’s recollection that you exhibited a newfound interest in poetry and activism after the Sedimentation project?

**R:** I’m not sure what you mean by exhibited. Andre Lalonde was a friend, I had discussions with him regularly. I surely told him I was reading poetry in a cafe in a social context. But I don’t know – what was your question again?

**H:** I gave you an opportunity to comment on Dean Lalonde’s evidence that you exhibited this newfound interest in poetry and activism following the sedimentation project.

**R:** In terms of the chronology, I do not think it went that way – my interest in poetry dates back to my childhood. There was a time when I read poetry in a cafe, it was the cafe of the graduate students’ association of the UofO. It was called Cafe Nostalgica. It doesn’t exist anymore but at the time it was the cafe for graduate students. I spent about one year reading poems once a week during the Open Mic night. I don’t remember which year it was exactly – I may have began – I developed an interest around 2005 – I mean an interest in reading my poems at Cafe Nostalgica – I think at that time a student suggested I read at the cafe at that time. So I did that for a while, more regularly during a certain period and once in a while afterwards. In my mind, there is no link between the lakes project and the poetry. If there’s a link it’s a coincidence. I must say as well, that the lakes project – the funding I was attributed for this project finished in 2005, but the project continued for many years because I continued to write articles about the project, collaborating with other researchers. There wasn’t an end to the lakes project in 2005 because of the end of funding – in fact, in my physics funding, which is not environmental

science, I asked for resources to continue and finish the lakes project, and I was granted it. In fact, when I was fired, I had just been awarded 5 years of physics funding to complete this project. This funding was from the NSERC (Natural Sciences and Engineering Resource Council) – I believe it was in 2008 that they awarded me 5 more years of research funding. This included work on the lakes project. It wasn't over, there was a continuation.

**H:** Just to be clear, Dr. Rancourt, are you telling us you didn't share your book of poetries with Dean Detellier?

**R:** I don't remember having a book of poetry. I've never published a book of poetry. Sometimes I collected poems to show a colleague or friend, but never published a book – I was surprised at Dean Lalonde's testimony – I wouldn't say it's impossible, but I don't remember that. If you have a document that would help me review this event, that would help.

**H:** Now, if I can assist, Dr. Rancourt, your task is to tell the truth to the best of your recollection. If I have a document I want to show you, that's up to me.

**R:** Ok.

**H:** Now, I have an exhibit – grievances related to the two warnings...

**R:** Which grievance are we talking about now?

**H:** Let's go to exhibit 14. Refer to pg. 3 of the document, under the heading "reparations", par. 3.

**R:** Yes, so this grievance was regarding the letter of reprimand regarding SC11101.

**H:** Yes, I don't want to interrupt you, Mr. Rancourt, but I'm not asking you to describe the grievance.

**R:** So, the third paragraph.

**H:** I'm referring you to the words "incidences of defamation". Do I understand correctly that you're claiming for harm or damage to your reputation when you use that term "defamation"?

**R:** I think it's a general complaint about the dispute between the employer and myself.

**H:** Dr. Rancourt, do you value your personal reputation?

**R:** Of course.

**H:** Are your feelings hurt when people tell lies about you?

**R:** I don't remember the last time people told lies about me, or are you referring to a specific incidence?

**H:** No, at a general level, are you hurt when people tell lies about you?

**R:** My emotional reactions – I can't respond in a general way like that – there are times when I feel strongly, there are times not – defamation is an attack on my reputation – so the question here is “was my reputation in question”? and the question “did I feel an emotional hurt?” – I believe this is secondary.

**H:** Dr. Rancourt, let's just park the complaint for a moment. Can you confirm to me that there have been occasions in your life when third parties said things that harmed your reputation?

**R:** Yes.

**H:** And do you recall being emotionally hurt by this? My follow-up question was – do you recall being emotionally hurt by those occurrences?

**R:** I remember one time at the university – my emotional reaction was that I found that unjust, and I was angry. I was not hurt, but I found it unjust, and I was angry. I found a great potential for this to do me harm in my career. I filed a grievance about this, but that is not before us today.

**H:** So you'd agree with me that one's reputation is a very important asset?

**R:** Professional reputation is very important to a professional, of course.

**H:** As a consequence would you agree that it is very damaging to an individual to defame?

**R:** I believe that defamation, by definition, means that one has done damage to the reputation of a person. So what you have proposed, for me, is a tautology – it's self-evident. But there may be criticisms that are hurtful, that are criticisms of the professionalism of a person, but which do not do harm to the person's reputation. And I can give examples, if you like.

**H:** I'm not asking you to, but feel free.

**R:** Ok, sometimes a criticism does not do damage to a reputation if a third party does not find it to be true.

**H:** To put it another way, would you agree that it would be difficult to work with individuals who damaged your reputation?

**R:** I've never worked with people who have attempted to damage my reputation. So it's a purely theoretical question.

**H:** Would it be correct to say that the late Dean Lalonde was at one time a friend of yours and you had lunches together?

**R:** Yes, and in my mind, my friendship for him never ended – and when he made his testimony, he expressed the story of the transformation of his friendship for me, and he never expressed those things to me personally. I heard them for the first time during his testimony.

**H:** Well thank you for clarifying that – so he was a friend for you throughout and we'll work on that premise. Would it be accurate for you to say that Dean Lalonde was a proud man who highly valued his professional reputation?

**R:** Not more than other professors.

**H:** Let's approach it another way – would it be true that the others profs you are talking about highly value their reputations?

**R:** What do you mean by "highly valued"? All professionals want to avoid their reputations from being damaged.

**H:** You are aware that Dean Lalonde was a member of Mineralogical Association of America?

**R:** No, I wasn't aware, but if you had asked me I would have said "most probably". I never saw his name on a list of members or anything – I knew he was a member of the Canadian Mineralogical Association. In fact, perhaps I'm wrong – he may have already been a member of the other association, and I was aware. I am not certain. I do not have a precise recollection at this moment. But I'm certain he was a member of the Canadian Mineralogical Association.

**H:** Dr. Rancourt, you knew that Dean Lalonde was a mineralogist, had been for 30 years – you knew it was highly likely he was a member of American Mineralogical Association?

**R:** I know that, in my case, when I worked in mineralogy, there were times when I was not a member of the American Mineralogical Society. Of course he would have wanted to be, and of course the probability was that he would have been most of the time – but I don't have knowledge of this and right now I don't know what facts I'm dealing with in relation to this.

**H:** Refer to exhibit 79 please. Do you recall sending this to the members of the Mineralogical Society of America?

**R:** No, because it was sent to a mailing list “MSA Talk”. These were people who wanted to be on that list and who wished to be on that list. Yes, I remember having sent this email.

**A:** This was a discussion list, you say?

**R:** Yes, a more or less open list, to which mineralogists could add their email addresses.

**H:** Did you take any step before taking it to find out how many members of the Association could access this?

**R:** No.

**H:** Could we assume that that is because you didn’t care?

**R:** I did not ask myself the question “how many members there were” on this list.

**H:** Am I correct that there are – and this is Dean Lalonde’s testimony – that there are approximately 3000 members of this association, all of whom could have had access to this list?

**R:** Certainly not all, because not all would want to receive emails from a discussion list such as this.

**H:** To put it another way, were you hoping to get as wide an audience as possible from this email?

**R:** No, I had no intention other than expressing myself in this way. I would say the motive of my message was on one hand a complaint and on the other hand to initiate a discussion regarding professional responsibility and our role as administrators and self-criticism. My intention was in this vein. At the time of this message, I think I was still in shock to have lost my job and hurt, I tried to communicate to the broadest population that there had been an injustice in regards to me.

**H:** Were you hurt that Dr. Lalonde had recommended your dismissal.

**R:** I would say that I was hurt to see that Andre Lalonde could, in my view, act as he had been directed rather than independently, especially given that he knew me. So I felt he was doing harm to himself, and I was surprised by that. And hurt, yes, that he burnt the bridges with me and he did nothing but act as an administrator who follows direction. Especially for a Dean who, in my professional experience must be independent from the administration. In fact, the entire collective agreement is written in this way – it presupposes a great independence on the part of the Dean.

**H:** Now Dr. Rancourt, when you pushed the button and sent this email, with all the attached material...

**R:** No, Mr. Harnden, there is no attached material – there are hyperlinks, which are distinct from attachments.

**H:** Well thank you so much for that clarification, Mr. Rancourt. Were you aware that readers could access this information?

**R:** ... the other article was an article in *Zmag*, an article I wrote about the nature of my dismissal – and the third link here is a link to a specific article on my blog called *U of O Watch*. I would have to go and see what that article is, but from what is here, I think it is an article related to a letter the Dean sent me concerning my mental health.

**H:** If you could turn to exhibit 80, does this refresh your memory about this link?

**R:** Yes, I think it's exactly that article.

*(Morning break at 10:53)*

*(Resume at 11:12)*

**H:** Did you have an opportunity to review exhibit 79?

**R:** Yes I read it during the break.

**H:** Now returning to exhibit 79 for a moment – you said “unfortunately my Dean, a mineralogist, played a less than admirable role”. Did you have any doubt that sending such a comment to Dean Lalonde’s peers in this association would not be extremely hurtful to him?

**R:** No, I had no opinion or reason to believe the degree to which he could react emotionally, etc. – you’re speaking about his emotional reactions – I had no information related to this. I did not know his emotional disposition – but I know that the exchange in question – I have evidence that this would not have affected his professional reputation, because the people who responded to me were of the sort: your critique goes too far – it was feedback to tell me that the people on that list did not appreciate what I had said – it was not regarded as credible or pertinent for the mineralogists who discussed on that list.

**H:** Dr. Rancourt, Arbitrator Picher referred to you as having a highly discerning mind. Could you please apply that mind to my question? My question was – did you not know this would hurt Dr. Lalonde?

**M:** His answer was “I did not know”.

**H:** Dr. Rancourt, are you saying under oath, that you did not know sending this email would be highly hurtful to someone you considered to be your friend?

**R:** Yes – we have to look at the context – I didn't know if Dr. Lalonde was on this list – I did not predict the emotional reaction of Dr. Lalonde.

**H:** Is that because you did not care about his emotional reaction?

**R:** I did not have the occasion to examine that question – it was not the goal of my communication – I can say that I am sensitive to the well-being of Andre Lalonde – when I saw his testimony he appeared to me to be someone who was in pain and I was sensitive to that – I am sensitive to that and I always wanted the well-being of Andre Lalonde and his family but this does not prevent me from making criticisms. I have explained the context of this message, especially in the time immediately following my dismissal.

**H:** I submit to you that that is a very relevant context and that you sent this material to Dean Lalonde's peers to get revenge for his role in your termination.

**R:** I say no – I did not have the feeling of vengeance – I regularly made criticisms of this type in all ways I could on my blog – it's part of my manner of interacting with society, to make these kinds of criticisms – there's nothing mean in it, and I continued to do it before I was dismissed, and after I was dismissed. I would like to show you, as part of my response, a very similarly criticism I made before I was dismissed, based on Access to Information documents – it was a Vice-President who had falsified a document, and I criticized this on my blog. When I found that there was an ethical problem I wrote about it on my blog and told the world. It was with the goal of playing my role as a critic. There was nothing nasty about it.

**H:** You knew that Dr. Lalonde was an amateur astronomer, right, and that on an occasion he photographed a comet?

**R:** Yes.

**H:** Did you know that it was one of his most prized possessions?

**R:** No. I knew he was proud of it, but your expression “most prized possessions”, no.

**H:** But you knew he was proud of it.

**R:** Yes, for my 40<sup>th</sup> birthday, he gave me a copy of it. In addition, we went together to Montreal to meet the amateur astronomer who had discovered this comet, and to watch a presentation by him about it.



**H:** So you knew there was a sentimental importance to this photograph for Dr. Lalonde?

**R:** Yes I would say so.

**H:** I'll refer you to the first page of exhibit 80 – is that a copy of the photograph?

**R:** Yes, but a copy of the photo that is publicly available on the internet. I took the publicly available photo and put it on my blog.

**H:** Tell us why you would put this photograph, which only you and Dr. Lalonde would appreciate the significance of, on your blog?

**R:** For me, it was a personal message since, as you know, only Dr. Lalonde and I would have known the significance of. It represented an ethical fall, the comet falling towards Earth, there was a symbolism to it. But at the same time, it was a personal message to Dr. Lalonde symbolizing the grandeur of life and to reconsider his actions, which I showed, supported by documentation, that he had acted dishonestly.

**H:** I suggest to you Dr. Rancourt, that your response does not exhibit dishonesty – why don't you agree that you posted this photograph solely to maliciously hurt Dr. Lalonde?

**R:** Absolutely not – this never crossed my mind. I tried to reach Dr. Lalonde via something we shared, in order to cause him to re-examine his behaviour. And so, it was a way to breach the distance between us and suggest there was something fundamental to our relationship and our friendship. It was a severe criticism like this that was necessary to achieve this, if possible.

**H:** You're telling us, after affirming you'd tell us the truth, that you included this photograph on a public website – that this was an attempt to bridge your friendship – are you sure you were not just mocking him?

**M:** The witness did not say "bridge the friendship".

**R:** I wanted to make him re-examine his position, because this was a necessary step to take if we were to correct things. The English word would be "jolt" or "shock".

**H:** So you knew this would upset Dr. Lalonde?

**R:** No, I cannot know the emotional reaction of a person. I make my criticisms as I see proper, and the reaction of the other person is their business. I am responsible for making my criticism in the most just manner possible. The other person has the responsibility to react as they will react – it does not belong to me. But I would like to say that – if I look at pg.

3 of this article, at par. 3, it refers to documents that the UofO possessed and refused to give me, and in my view these documents are relevant to the case we are dealing with today. However, these documents have not been divulged by the University to this date. It would be useful to look at these documents in order to further understand what was behind my critique – because I understood you would be providing everything which was “arguably relevant” – I have not seen these documents.

**H:** Would it be correct to assume that your approach is this: that it’s not your concern how a third party reacts?

**R:** No. The person’s emotional reaction is an internal process. I’m responsible for what I write. If Andre Lalonde came to see me and told me “this article hurt me”, I would have reacted with empathy and would have – when someone informs me of their emotions, I react. But in the context of a professional criticism, I do not spend time predicting the emotional reactions of others because I cannot.

**H:** Do you care about that emotional reaction?

**R:** I just explained it. When someone communicates directly with me their emotional reaction, I am sensitive to that.

**H:** And if there hasn’t been an occasion to have that dialogue – that’s when there’s no reason to care?

**R:** If I have no information on the emotional state of another person, I am lacking information and I have no reaction to that. I do not invent things in my own mind, because in my experience, emotional reactions are unpredictable. One person may be hurt, another may be angry, another indifferent, I do not know.

**H:** Refer to the third page of exhibit 80 – you say “it appears that the Dean was prepared to lie to cover the whole mess...”. I’m referring you to that paragraph. Are you telling us that when you drafted that paragraph, that you didn’t know it was be seriously hurtful to Dean Lalonde? Are you seriously suggesting that to the Arbitrator?

**R:** Yes. In my mind, Dean Lalonde had closed the door, decided I was unstable or not myself, he may have ignored everything I said. I did not know how he reacted – he may have found that superficial or unimportant – I had no idea how he received that and how he reacted. At this time, I had lost credibility in his eyes – so if I had lost credibility, why would my statements bother him, for example?

**H:** But you understood you’re putting this statement in the public domain, on your blog – so anyone in the world could see it, draw conclusions about Dr. Lalonde. Are you seriously saying you had no idea if that would be of concern to him, if that would upset him? Are you serious?

**R:** Yes. People could read the blog and read the documents, the logical arguments, whereby I argued that he may have lied – readers could decide for themselves – and Dean Lalonde himself could have responded, clarified, corrected, he could have sued me for defamation even. The reader will decide him- or herself what is probably – he will take a conclusion one way or the other – he will say “Mr. Rancourt is completely out of it” or, it could be something else. No one ever asked me to correct the facts in this blog post.

**H:** This approach you just described in terms of decision-making in putting things on your blog – is this how you govern yourself generally?

**R:** I write blogs – I propose an interpretation of the facts and I present the facts, and following this the reader must determine for him/herself. I invite readers to criticize or comment. Several times it has occurred that a reader has identified an error and I corrected it immediately.

**H:** You recall that Dean Lalonde testified about his efforts to respond to the access requests that you made both before and after your dismissal – you recall he did testify on that subject?

**R:** Yes, he testified re: my demands for Access to Information, but I made more than 20 requests so if you want to talk about a specific one you will have to identify it.

**H:** No, I’m talking about the general load – he said he located over 14 000 documents in his response – do you remember this?

**R:** No, I don’t remember if he mentioned a specific number.

**H:** Well, you were aware that it would be a massive task for Dean Lalonde to review all the documentation in order to respond to your voluminous access request.

**R:** No, and I’ll explain why – we’re talking about a blog posted on August 1, 2009.

**A:** This is the same blog post?

**R:** Yes, exhibit 80. In the context of this request for Access to Information, there were very few respondent documents. Dean Lalonde in his first answer said there were no documents respondent to this request. After I went into appeal of this decision and work had been done, the University admitted that there were 11 documents respondent to the request. They did not give me access to the documents and you have not provided them in the instant case. The Dean’s first position was 0 documents and he must have known there were these documents because he had exchanges with the VP Academic about this topic – he should have known there were documents – we can see in the article that the Information and Privacy Commissioner’s mediator negotiated with the University – the mediator said to the University, “since the Dean

says there are no documents, the requester would be satisfied if you sign an affidavit to this effect”. So when I requested an affidavit with the names of those responsible, suddenly 11 documents were found. No affidavit was signed, but 11 documents were found. I had an index of documents and they showed correspondence between Dean Lalonde and his boss, the VP Academic. So I find it hard to see how Andre Lalonde could have said there was no documents. He made it up and said that to the mediator. It came from talking with colleagues in the hallways, that is what he said.

**H:** Dr. Rancourt, I don’t know if you understand the access world or not, but simply by the fact that you’re asking for a small number of documents that you’re forcing the institution to examine thousands of documents – do you understand this?

**R:** I don’t understand this because the University was able to very quickly locate these 11 documents. The University did not complain that it needed more time or that it would be a lengthy search, nothing like that – they said: “here is an index of 11 documents”. I made requests for Access to Information which were broad, which requested everything about me – these were lengthy requests which required extensions, etc.

**H:** Do you not appreciate that the University needs to look at more than 11 documents to get those 11 documents?

**R:** I only said the University only needed to look in a specific place to get those documents.

**H:** If you return to exhibit 81 in the book – can you first confirm this is another document that you put on your blog and that remains there today?

**R:** Yes.

**A:** So you are confirming these are comments you placed on your blog?

**R:** It’s an article I wrote and put on the blog.

**H:** And you selected title: “Did Dean destroy documents and lie in affidavit?”?

**R:** Yes. May I read the article?

**H:** Take your time, sure. At pg. 2 we see request is described as dating back to 2008, to produce all records about your Cinema Politica film and discussion series – that’s every record the UofO possesses that touches that subject, right?

**R:** Electronic records, yes.

**H:** You're well aware that that would require an extensive search of the University's electronic records, right?

**R:** To me it seems there are several key words that would facilitate an electronic search.

**H:** In your blog you say "It appears that lying to the IPC and disregarding ATI law may be a little too common in the Faculty of Science?" – did you understand the contents of this blog to do significant damage to Dean Lalonde's reputation?

**R:** No, how damage is done depends on many things – I did not attempt to evaluate that – I made a criticism and I did what I thought was appropriate – if there is damage to a reputation and in what way – that means there is a lack in how we respond to request for information in the Faculty of Science. This does not touch on Dean Lalonde's reputation in his other spheres of activity.

**H:** Is that an approach that you would condone with third parties speaking about Dr. Rancourt? "He lies, but this doesn't affect his reputation as a poet, so that's OK"?

**R:** My reputation as a scientific researcher – the impact that such critiques or comments may have – it depends on who hears it, on the credibility of the person saying it – I don't spend my time evaluating that.

**H:** Can we move to exhibit 82 please? I will refer to a passage midway down the page – Dean Lalonde going back to being a regular professor and ATI request/lie – is there any question that you juxtaposed those two things to suggest that Dean Lalonde stepped down from his position because of the ATI situation?

**R:** Of course not, for me this is information separated paragraph by paragraph. I mention the big points about his time as Dean. It did not cross my mind that I was in the process of saying he had stepped down because of problems with Access to Information requests. If you want to propose that it's up to you, but I don't see it that way.

**H:** Does it cause you any concern that on reflection, readers may connect the two?

**M:** I guess at this point, I'm going to object.

**H:** I'd ask the witness to leave.

**M:** Denis Rancourt was dismissed for three things: 1) University says he gave marks in one course that were too high; 2) he didn't follow the course description in a certain course; and 3) he gave A+'s that were not due to proper evaluations. That's what this arbitration is about. We have this document filed. I understand the Employer is going to say that... I have no recollection of Dean Lalonde saying – I read this as suggesting – "one of the reasons I had to

step down was because of what's contained in this" – I had no opportunity to cross-examine Dean Lalonde on this – we're so far from the reasons for dismissal – to ask "doesn't it give you concern that someone who saw this might think you were attempting to insinuate that the reason he stepped down is connected with what is contained in your blog – I've tried to take a very restrained approach to objections because I understand the University's position is that "whether or not there's grounds for discharge, there must not be reinstatement – but this goes beyond – the Employer is saying Professor Rancourt deliberately suggested resignation was some kind of reaction to what was contained in his blog – I don't think it's appropriate to continue this.

**H:** Two reasons for this line of questions – very relevant – they are: blogs and other statements regarding other people involved in his dismissal – at the end of the day your determination – did Dr. Rancourt tell you the truth when he gave his explanation about giving A+ to all students and miraculously they all performed at A+ level – we will say this is inherent nonsense – in order to prove this man is not credible, we are required to show you instances where he will not answer honestly – he will evade answers that are so obvious to all observers under oath – it starts to reveal a character – as I go through his conduct – his character – he's not a credible witness; and 2) you should not reinstate him – some of the characteristics: animosity towards coworkers is first on most arbitrators' lists – we heard under oath what this gentleman was prepared to do to gain revenge on the Dean for his termination – if this isn't animosity towards coworkers then I don't know what is – such a willingness to libel them without concern – the idea of putting him back in the workplace, hopefully to you that is inconceivable. Yes it's going to be time consuming and it's not in the grounds for dismissal – I want you to have a better appreciation for his character before I take you through grounds for dismissal because this will inform you about his credibility about this nonsense that "everyone in my class performed at A+ level". That's why I'm doing this.

**M:** So, let's talk about first thing: "I'm entitled to ask questions to show you he won't answer questions honestly". On that basis, we can start with whether he can be barred from a store, whether during his high school years he'll admit he did this or that or the other thing – simply can't do things on this basis – it's called "bootstrapping" – can't create relevance by saying "going to ask question and if get answer that is not relevant, going to say he's not credible". Can't bootstrap question. To say "I can ask any question as long as answer may demonstrate some issue about credibility" – that's not the right approach – it goes further: what's being argued is that these questions are permissible because they go to the individual's character. I don't have case law but the law is: "If I try to put in evidence about a grievor's character in arbitration and show how the grievor's friends all think she's a wonderful person and grievor's minister or rabbi think she's a wonderful person and wouldn't believe she would have done alleged thing" – I would be shut down in seconds. It's simply not relevant to assassinate character and say "see I threw so much muck at him, and this is not the kind of person you want to put back to work". The University may believe that but that's not something available to them.

**H:** This is a very critical point – and we want to at least refer you to the particulars at issue – the University said it will rely on Dean Lalonde issue regarding Dr. Rancourt's dismissal. If the objection is pursued, we should take time with it – you're taking out a significant component of our argument – it's not just cause...

**A:** You both want to produce case law – I'm going to ask you to both briefly send me case law. We're back next week and I can read it in the mean time. Next hearing date, at the start I will give you my ruling. When we come back, I will rule on your case law and different points of argument. Send it to me by e-mail, you have my address. I'll read it and make a decision. We may resume next week. Points of law both of you are using to argue I should permit or not permit this kind of question. I prefer to be informed and read this case law. I don't have it in front of me. It would be proper that we adjourn now and you send me this case law, I will read it. When we resume I will give my ruling. In order – because of time factor – both of you at same time send me your case law – you can reply at same time.

**M:** In terms of exclusion of Professor Rancourt – normally reason why witness excluded would be – if there's something discussed about questions that are to come – I haven't heard anything that would violate that principle so I'm asking permission to advise Professor Rancourt about content of discussion.

**H:** I would object to any description about how I intend to use this in my argument. I ask that not be shared with him.

**M:** But I thought you said this was already clear at outset.

**H:** No trouble with you reminding him about statement of particulars, but I don't think it's appropriate for you to share what I said to the arbitrator.

**M:** I have to disagree and will ask the arbitrator. It is abnormal to exclude the grievor on this. Nothing that has been advanced during the course of this argument that was not already known to Professor Rancourt. The University says there's nothing new about what they've said today. I want to tell Professor Rancourt, since we're adjourning for today.

**A:** I will permit you to discuss with your client. We did not go into details, still in generality. Yes you may explain the circumstances in which we are adjourning. The case is in recess until next Tuesday.

Tuesday, May 21, 2013

*(Continuation of University's cross-examination of witness Rancourt)*

*(Begin at 9:40)*

A: First, I would like to thank you both for your submissions, which helped me refocus on the case – and hopefully you could still manage a weekend – but after having read your submissions, I have decided to permit the line of questioning in which the Employer's attorney started when the objection was made – basically, the issues of just cause and awarding compensatory damages in the statement have been joined – you have agreed on the law that I have jurisdiction regarding the remedy of reinstatement and compensatory damages – factors listed in *(names a previous case)* – refusal of coworkers to work with grievor; lack of trust between coworkers and grievor; demeanour of grievor at hearing; risk of poisoned atmosphere at workplace; lack of accepting responsibility on part of grievor, *(names other factors)* – these factors are quite large in scope and relevant evidence to prove them may be extensive – the University's opening statements and particulars refer to the broad sequence of actions by Mr. Rancourt, including internet statements of all sorts directed to professional associations, radio communications – I agree with the Employer's submissions that he may cross-examine the grievor pursuant to this line of questions – there are limits – the mere fact that the Employer asserts that the remedy of reinstatement is invalid does not mean all conduct the Employer finds offensive is admissible – the Employer's evidence should not be directed with the sole objective of undermining the grievor's credibility – I refer to decision of Arbitrator *(names arbitrator)* – in that case Employer seeking to put in evidence the conduct of an employee for workplace behaviour which was in no way related to issue before the arbitrator. The evidence of the University must fit within the parameters of the reinstatement factors which I have listed – proper for me to analyze evidence – objection can be taken by APUO to questions related to particular forms of conduct on the basis that this was not kind of conduct identified by the reinstatement factors. That, in short are my reasons. That being said, I will ask you to continue with the hearing. I may add that by making this ruling, this is purely a procedural ruling and in no way should it be taken as showing an opinion about where I stand in relation to forming an opinion regarding the merit of the case or the remedy that I will be asked to give.

H: Mr. McGee, just let me know when we're set to go. We can start with a short meeting with counsel.

*(Lawyers for University and Union meet outside the hearing room)*

H: Mr. Rancourt do you have respect for this process we're engaged in?

R: Of course I have respect for this process, for my rights, and rights of others. In my mind this does not mean that I cannot criticize this process and the institutions that manage society, and that this critique – what I mean is that my respect for the rules, the law, the



collective agreement, the arbitration system, etc., for me is distinct from the fact that I may – and that I must, when I believe it's necessary – criticize these same processes, and that this criticism could be – in English the word would be “sting” – could use a strong language, might be considered impolite, could say things in a form that I choose such that my societal criticisms have an impact – but this does not mean that I do not have a great respect for these rules and institutions – I've always followed the rules, the collective agreement – I've always been very careful to understand the collective agreement – I've discussed with colleagues, I've read about my rights and it's something I've always taken very seriously – I insist that we distinguish my professionalism in relation to the application of my responsibilities – we must distinguish this from my criticisms, whether that may be in regards to blogs, emails to the media – these criticisms have a different goal – it's a political goal in the broad sense – when I say political in the broad sense, I mean a citizen's and a professor's contribution, participation in the democratic process. So – when I speak about politics in the broad sense, I do not mean participation in a political party, I do not mean that I adopt a political ideology – I mean that I consider it my responsibility as a citizen and professor to be critical as I hear it and to tell the truth as I see it, using the form that I judge to be efficient and with a scope that can influence individuals and institutions. I believe I have a right to try to influence society towards an improvement, and I do it as best I can – I do this constantly and often. For example, when you say that in my blog criticisms that I defamed someone, I do not agree – because, in law, as I understand it, there are defences for defamation, and these defences include: the truth; but also something called a justified comment – “fair comment” in English – these are the criteria that may limit my participation and communication, my expression in society. I'm very aware of these factors – a fair comment could be something that has a risk, depending on interpretation of someone else, of injuring – it depends on the circumstance. But my expression is based in fair comment – and the fair comment is not necessarily true. It's not evaluated on the same criteria as something that can be proved. It's something one believes and gives rise to one's opinion based on facts – and in my case, the basic facts for my blog are more often than not documents that I have obtained through Access to Information (ATI) law – I have done more than 20 ATI request at the University of Ottawa over many years and, because – your question relates to my criticisms and my blog – my blog *U of O Watch* is a blog with the explicit goal of criticizing the UofO as an institution – and this blog has been actively published since 2007 until the present – and since 2007, I have formulated a number of stinging criticisms of professionals at the UofO. I would like to give a few examples – May 26, 2007 – I criticized the President, Gilles Patry, the Vice-President Academic, Robert Major, and the Dean, Andre Lalonde – June 29, 2007 – I wrote a blog article that severely criticized the President, Gilles Patry...

A: Mr. Harnden, are you planning to use these facts?

H: I'm very happy to just let the witness talk and we'll see where this goes.

R: June 20, 2007 – it was a criticism of Dean Andre Lalonde – June 7, 2007 – a criticism of the Dean and VP Academic – June 2, 2007 – a criticism of Dean Andre Lalonde –

July 21, 2007 – criticism of VP Resources, Victor Simon – July 7, 2007 – criticism of former Dean Christian Detellier – there was another similar article August 17, 2007 critical of direction taken by administration of Department of Physics – August 9, 2007 – article about President Gilles Patry and VP Resources Victor Simon, where I criticized and said the VP Simon falsified and altered a document – eventually I appealed to the President to correct this, and later in another blog article I severely criticized the President for having accepted such a thing. There was documented evidence coming from Access to Information requests, etc. My language was harsh – I used the words “lied and falsified”. In this way, there were critical articles of administrators – basically each and every month – it continued this way for several years. My point is that the University never, never asked me to change something related to the written content of the blog, they never disciplined me for my blog – never. They never disciplined me for my blog, they never had an informal conversation with me to suggest that my blog was not appreciated or should be changed in some way – never. It is not difficult to see all the people I criticized on my blog because there are keywords – the names of the individuals are in a column on the right on the blog, in alphabetical order, and one can read names such as Agnes Whitfield, who is a professor who was dismissed from his research chair because, in my opinion, she was critical of the university administration; the next name is Alain Roussy; then Allan Rock, who is the current President of the UofO – to date I have written 102 blog articles criticizing Mr. Rock, in one way or another – some of these were written before April 2009 – the first was written in April 2008; the next name is Alain St-Amant – it’s not always criticism – sometimes criticism, but also observations; the next name is Amir Attaran – the names are mentioned on the blog – if we go down the alphabetical list, just to give another example, there is the former dean Christian Detellier – when he was Dean of Science I often had the occasion to criticize his actions – there are seven articles that refer to the former dean – his mandate ended shortly after I began the blog – so most of his articles were written in 2007/2008. So we see that the more responsibility that administrators have, the more often I will write about them. My final point is that this blog, and my work on this blog – every year that I did a work report about my academic work at the university – I always explicitly included this blog as part of my academic work.

A:                               There is a work report...

R:                               Each year there is an academic report and I always included my work on this blog, naming the blog, in my annual report. The administrative reason for this annual report is so that the Dean can give us criticisms, compliments, or comments on our work. It’s a process set out in the collective agreement. My Dean never made negative comments on my work report regarding my communications via my blog – in fact, I never had a negative criticism about my work from a Dean in any regard. I think that completes my response for the moment.

H:                               Thank you very much for that fulsome response, Dr. Rancourt. Following the conclusion of the arbitration proceedings last Thursday, I understand that you posted an addition to the blog, is that correct?

R: Yes, that seems right, I believe I made an update about the recent proceedings at the arbitration, something like that – I don't remember exactly.

H: I'm going to ask the witness to identify a paper copy – just to be more efficient – just to move things along, and I know Dr. Rancourt shares my desire to move things along – the official exhibit is the one on the screen. Can you do that for us, Dr. Rancourt?

R: What you have given me is not exactly the same, since you have the blog context on the screen, etc. Allow me to read what you have given me please. Yes, so it is a blog article that I wrote and which was published on May 15.

H: Who do you see as your audience for...

A: Excuse me – if we are going to enter this document as an exhibit, I would like you to refer me to a title...

H: Are you satisfied, Dr. Rancourt?

R: Yes, I have read the document on the screen.

H: From your perspective, who's your target audience for this posting?

R: The blog *U of O Watch*, the target audience, if you wish, is the university community and all citizens who take an interest in the UofO.

H: Do I understand correctly – based on the material on your blog – you weren't impressed by my cross-examination?

R: My criticism – I found that your question related to Anarchism was, in my opinion, misplaced because, in my opinion, it was an attempt to prejudice against me because this term has a very different street meaning than its academic meaning – so I found this aggressive to be labeling me as an Anarchist while avoiding the underlying philosophy of the political theory of Anarchism – I found it to be irrelevant. That's my opinion on this question.

H: Was the aspect of what you call the “street meaning” of the term, related to the understanding that Anarchists support violence. Was that the part that you want to dissociate yourself from?

R: It's not a question of dissociation, but I understand that the term Anarchism used in legal proceedings – it's often youth who call themselves anarchist and don't understand what it means – who participate in more aggressive demonstrations, protests etc. – so the Court usually deals with this and the people of the legal system are familiar with a meaning of the term that is not the real meaning, which applies in our context. Also, since you ask me the question, I see that you continue to do exactly what I criticized last week.

H: Is that causing you some discomfort, Dr. Rancourt, is that what you're trying to tell us?

R: No, I have my opinion that it's not appropriate for you to do that, that's all.

H: Is it fair to attach labels to people?

R: My response: in general, in the political discourse, it's acceptable – discussions about individuals, etc. But in a legal process, when your goal is to create a prejudice, in my opinion this becomes unacceptable – if you want, Mr. Harnden, to write a blog about me and to say what you must, I have no problem with this – I have the right to a response in the public domain – but it's a whole other thing to come before a tribunal and try to label me with a term that has a meaning different from what I take it to mean – this is my criticism of you.

H: Just going back to your earlier response, where you were explaining the aspect of Anarchism that you – I guess, want to disassociate yourself from – you refer from the young people...

M: This witness specifically said he was not disassociating himself from...

H: I'll clarify – you refer to some young people and what they were doing – was it the violent behaviour of these young people that you want to distance yourself from?

R: No, thank you – let me explain – Anarchy, the political theory of Anarchy, has nothing to do with violence – it is not a theory of violence. Anarchy, as a political theory, is firmly against violence, against militarism, and against all organized violence. It's not a fault of the political theory of Anarchism that there are certain youths who call themselves Anarchist, and who want to create, by their actions, who seem to want chaos and destruction. It's not the fault of Anarchism that there are people who 1) do violent things; and 2) say they are Anarchist. But there is a meaning in the common sense – and this includes the legal profession in my opinion – that there is a strong association between the two – and that is because of the media, and what goes in before the courts, in my opinion. In my blog, I give by example Mahatma Gandhi, who himself said he was an Anarchist.

H: I'll just make a comment – I'll be putting questions to you which put to you words that you just used – you just referenced these young people and they're engaging in chaotic and destructive behaviour – do you endorse what you've just referred to – these young people engaging in destructive behaviour?

R: No, absolutely not – the meaning of endorse as I understand it is to agree and encourage, and the answer is no.

H: I'll just provide the witness with a document that I'll ask him to identify, and as before, we'll put the official version on the screen. Take whatever time you need to review this, Dr. Rancourt.

R: This document does not come from the blog *U of O Watch*. Just to be clear, as a first point.

H: I can tell you that it's on several places on the internet. Are you the author of this blog?

R: I want to know where this article comes from. I'll read it, then we can talk about it, but I'm pretty certain that it does not come from the blog *U of O Watch*. I think the question: which blog does it come from is relevant, because you asked me what the audience for my blog is.

A: But the question was: are you the author of this blog?

R: Yes, I am the author, it's from a blog that I publish called *Activist Teacher*.

H: You've told us the audience is different – what is it?

R: The audience of *Activist Teacher*, I would say, is: pedagogues, intellectuals, people who are interested in criticism of society – it's a blog containing articles which fit in, I would say the social sciences. Recently I took a collection of several articles from this blog and published this as a book this year.

H: Dr. Rancourt, we don't need to see your book right now.

R: So yes, I have confirmed that I wrote it and that it was published on the blog *Activist Teacher*. I will read it now, if you give me a moment.

H: So you point out that this appears on your *Activist Teacher* blog, is there any restriction on anyone in the world accessing this blog?

R: Maybe – I think in China and other places there are many restrictions as far as I know, but in general, Europe, North America, there are no restrictions.

H: This actually reflects your views, does it, Dr. Rancourt?

R: No, I wouldn't say that. I'll explain what I mean by that. This article was written following a conference – you see the first paragraph – there is a subtitle that is very provocative “Or, if you can't fucking cheer a burning cop-car...” – I wrote, this is my reaction to a conference about Anarchism – I attended this conference, which was organized by academics, in Toronto – I attended this conference and there was one panel – I was a part of this panel at a

plenary session – but there were also workshops, and I participated in those – the discourse of some of the participants shocked me – and this article was in response to this panel. In my mind, those targeted were people who were aware of this conversation and knew about the topics discussed there, since they are often repeated topics – so I admit that I was frustrated by the ideas of this panel and I wrote a strong response against one of the points of view expressed in this panel. That’s the context in which I wrote this article.

H: Are you satisfied that students of the UofO who would read this article would understand this context – does that give you any concern?

R: Your question assumes that there is something dangerous for students or bad for them in this article – I don’t agree with that, and I understood that to be an underlying meaning so I wanted to correct that. University students are adults, and they are adults who are preoccupied with their intellectual development – in my experience they have a great deal of intellectual discernment – and in my opinion, when a University student sees this document, there is immediately something that happens – because that’s your question: how will they perceive it? – they will immediately take a decision – either, it’s a theme that interests them, or, it’s part of a subject that does not at all interest them – because it’s not in their area – and they will immediately abandon it. Included in those who are interested will be organizers of this conference, students in political science or social sciences who pose these same questions – people interested in manifestations, protests, etc. – these students are aware of the big debates about protests and their interpretation – so they will receive this article as a criticism of one of the major points of view in this discussion – and I am satisfied that these students will understand the nature of my criticism and my point of view in relation to the other point of view. So my response is yes.

H: One further question about this article – the last paragraph is: to not attack hierarchy is to support it. So you’re telling us, after your affirmation that you did not intend, in this article, which begins “if you can’t fucking cheer a burning cop car” – that you did not intend to encourage students and others to engage in violence?

R: I know it may be surprising to you, Mr. Harnden, but that’s the case – let me explain – experts in Anarchism were present at this panel – some of them expressed the point of view that young people who practiced what we may call “destruction of property” had to be – did not belong to the theory of Anarchism and had to be stopped – and in my opinion, Anarchism is against organized violence but in favour of individual liberty – and I am of the opinion that – because what happens is that the panelists put all the effort into at what point it was incorrect that these students were wrong – and my opinion was, we should be focussing on “what is real Anarchism?” – I don’t agree with what they do, I don’t encourage it, but I am of the opinion that what they do can be authentic and from their point of view, morally justified. My point is that personal morality – the theory of Anarchism is not about managing personal morality – it’s against the principles of the theory of Anarchism to manage the personal morality of an

individual. So, when these researchers crossed this line and started criticizing the actions of these young people because they criticized their personal morality – this frustrated me and I intervened during the workshop in the question period – I expressed that people have to take responsibility for their personal morality – I say very provocatively in this article: “stop saying to these young people that they do not have a proper moral analysis – they are going to jail, they will have to deal with the justice system – but don’t say that they are morally wrong – they feel oppressed by a violent system and they respond by choosing the wrong methods, these are not efficient methods to respond to their needs – it is therefore an error, but it’s not right for you to be criticizing their morality – we have to celebrate the liberty of choosing your own path” – this is the context of this article, and that’s what I explain in my book. Personally, if a young activist comes to see me and speaks about these things, I discourage them strongly – and I’ve done this – each time I tell them “you are mistaken there – you are going to hurt yourself, even if you believe you’re choosing the right approach”. But, at the same time, as a theoretician, I make the distinction between an authentic individual intuition and any organization that wants to oppose that intuition – in other words, in my personal interactions I will do everything I can so that students stop doing that bad stuff but, in an academic discussion about Anarchism, I will express what I see as being the big problems – I will do it provocatively – and this is my role, and at the same time it’s absolutely compatible with my efforts to convince the young that those efforts are destructive and are going to do themselves harm. So the important thing is to discern these components.

A: We will recess now for 15 minutes.

*(Return at 11:21)*

M: Professor Rancourt requests – three documents he wants to refer to.

H: My feeling is that there will be occasion for re-examination if Dr. Rancourt wants to bring in new documents – so I don’t think it’s appropriate for the witness to be tendering documents at this point in cross-examination – better for Mr. McGee to refer to them and ask if they were the right documents during re-exam.

A: Generally I would agree with you, but given the nature of the responses given by Professor Rancourt, which are quite large in scope, and he refers to his interpretation – but without going into or opening new avenues – otherwise, we’ll never be able to get through the testimony given the understanding at the beginning that what we’re dealing with is quite large in scope – subject to your attorney re-introducing them in re-exam.

M: I don’t want Professor Rancourt to have to refer to a document that’s not in evidence.

A: I understand that.

H: So are you going to share the documents – make them available in case?

R: One second please, Mr. Harnden. I wasn't finished my response to the last question. The question was regarding this blog article "Symbiosis of Anarchy and Hierarchy" and the question had to do with, do I encourage violence that some young people may associate with Anarchism – a question of this type – I will complete my response: I explained at the beginning of my response that we must make a distinction between theoretical statements regarding political science and social science on a blog where I respond to positions taken at a conference – have to distinguish this, my provocative expression intended to cause people to re-examine their positions – have to distinguish this from question if young will perceive it in a certain way. So, I have three documents to present – a letter that appeared in Globe & Mail from February 9, 2009...

H: I would object to the relevance of this article – this is just a letter from a fan.

A: I don't believe that this is related to the question. I heard the comments from both sides, and I believe it's not relevant.

R: I hear this and respect it, but I just want to state on the record that I did not have an opportunity to comment on the relevance.

A: I've heard from the University and the Union's attorneys. They are the owner and director of the case that is before me. They are the only one entitled to make any submissions regarding the relevancy, procedural, and in the end to argue your case. That is how arbitration cases are managed and directed since always, and this will not change. I've asked counsel for their comments and I have made a ruling. My decision is that it is not relevant and, not that your, in another forum your comments would not have been heard.

R: I understand perfectly and I accept this conclusion.

A: So I will strike this document from the documents which I have on my computer, so this way I won't have it. If I have to make decisions, the same type of decision that I'm making, it doesn't mean that these documents could not be introduced in other circumstances. Ok.

R: Do I have the right – I know the document is not in evidence regarding this question but I can I say "I would like to refer to this document 'because'"?

A: No. The Union's representative is in charge of that.

R: Ok, so, without referring to this document, I will say in the final part of my answer, that there were often parents of students who visited my course, and they never complained about statements on my part that may have been bad for their children. Also, there



were student associations, one in particular, where all the members of the executive co-signed a letter expressing the value of my teaching and why my teaching was needed in order to explain environmental phenomena...

H: I object that this is not relevant.

A: I agree.

R: Ok, I just want to say that no one complained about my teaching being bad for people – there was never such a suggestion.

H: Dr. Rancourt, I just want to return, for a moment, to your blog of last Thursday.

R: Yes.

H: And in the last paragraph, and we have it on screen – you say that by contrast, the University had to ask one chairman of Chemistry that he refrain from making certain comments towards you – and you provide a link – I have some questions for you, which you have very helpfully drawn to my attention – I'll begin by asking you to identify a document. First, just, for the record, can you confirm this?

R: I think this is a grievance which is not before us in this procedure? This link refers to another document, which is a one page letter from Dean Andre Lalonde to me which – it wouldn't be hard to look at this document – but it's a letter in which the Dean informed me he instructed the Chairman of the Department of Chemistry to stop making the kind of comment he had towards me. The Dean also informed me that he was happy that Mr. St-Amant had effectively stopped doing such things, and the Dean informed me that these were inappropriate comments. A letter from the Dean of this nature – no one ever sent me such a letter asking me to stop making comments such as was sent to Professor St-Amant. This is because Professor St-Amant's comments went beyond what would be acceptable to put on a blog. So I filed a grievance about this and the result was that the Dean asked Professor St-Amant to stop and he wrote me a letter informing me of this, and Mr. St-Amant stopped. So, this link goes to the letter from the Dean and not at all to the document that Mr. Harnden passed me.

H: I stand corrected, Mr. Rancourt, but would you agree that this document is the grievance, which is the source of the dispute.

R: Don't remember – may have been a complaint letter to the administration and there was also this grievance – not sure if it's exactly the same thing. If we look at the Dean's letter perhaps that will give us more information about this.

H: Perhaps given the difficulty you're having remembering the subject

matter you blogged on last Thursday evening, I'll give you a copy of the letter from Dean Lalonde.

R: Ok, this new document, this letter from Dean Lalonde is in fact the document that is linked to in the link we are referring to. Thank you, it is a very useful memory aid.

H: My next question, Mr. Rancourt...

R: You already asked me a question and I haven't yet answered – you asked about grievance – Dean refers to this grievance.

H: Thank you, so we can then identify grievance is exhibit 123. I'm going to ask you some questions about the content of your grievance. I'll refer you to the second page of the document – if I understand correctly, that you are grieving on the basis that a fellow professor was making critical statements about you?

R: No – if you read the text it says “go beyond the bounds of critical opinion and into intimidation, libel, and personal threats”.

H: Do I understand that you felt it improper for a fellow professor to make public statements that you thought were defamatory of you?

R: No, I made this grievance in terms of Prof. St-Amant's broad behaviour towards me and threats to me.

H: Do you agree with me that a component of your grievance was that a fellow professor was making defamatory comments about you?

R: Yes – but I asked the Employer to make an investigation about this alleged defamation – was it true, was it a fair comment – the nature of my grievance was to determine this – so yes, there was a defamation component.

H: So should we infer from that that you find it unacceptable in a University setting for a fellow professor to be defaming another professor?

R: Yes and no – I mean, if a professor makes comments or expresses opinions that could be defamatory, they are subject to defamation law – if it does not go beyond this point – if there is no complaint beyond this pure complaint of defamation and there is a difference of opinion about whether it was defamation or not – it can be settled by the Employer if they want to intervene, but usually they do not – or by a third party. My opinion is that the Employer should not interfere and the Employer has not interfered in my experience in cases of simple defamation. In this case it was more serious and that is shown by the fact that the Dean intervened. This has never happened to me in my career and in my sense never has occurred but

my experience is of course limited. I think there is a huge difference between critical blogs and Mr. St-Amant's behaviour, over a long term, specifically targeting me.

H: Tell us, what did Professor St-Amant do or say that troubled you so much?

R: This is just from memory because it's been a long time – but I wrote in my grievance several things – I could look at it here – at the second page, there is a paragraph that beings “the questionable actions of Professor St-Amant go back to 2005, in relation to... and this includes:” and this lists several bullets. I then say “Professor St-Amant's... is derogatory...”. We have to realize that Professor St-Amant was the Chairman of the Department of Chemistry, an influential department in the Faculty of Science – he was an influential person in the community – he was not a professor in my department and he shouldn't have got involved in what was going on in my department in terms of his administrative role. I said “the messages to the Executive of the University alerting them to this behaviour...” – oh no, that is my message – there was something very relevant – there was a communication to a large body at the University e.g. the Senate, where he said something along the lines of, from memory, that I had no competency in teaching and that I was not doing my job teaching in my area. This wasn't supported by documents or facts – he was using his position as Chairman of the Chemistry Department to attack my professional reputation to highly placed bodies of the university administration. It was so serious that the Dean intervened. It wasn't just about me, but about students – he publicly denigrated students in public emails and the students responded that it did not make sense – there were many things that were wrong, in my opinion – very different from my actions as a professor criticizing the administration, basing my critiques on documents obtained through Access to Information. There's a line that was crossed.

H: So if one goes over that line, if one criticizes the competence of a fellow employee at the UofO?

R: No, if it's not based in facts, if it's not a fair comment – but I know cases where colleagues criticized each other and it was ok. But if this comment is not justified by any document, that's going too far. And if this criticism is stated as a fact and not an opinion – stated by a departmental chairman, all of this is part of what makes it “going too far” – but with that being said, when I submitted this grievance, I totally respected that it would be the Employer performing the investigation and deciding if it would intervene or not, and how. In this case, the Employer decided that it would intervene. There never was such an intervention in my case.

H: Refer you to paragraph at top of page two – “Employer is responsible for providing a safe and healthy working environment, and this involves protection from possibly stressed employees...”

R: Obviously, it's a grievance, I'm making my argument.

H: Do you still hold that view today, that an Employer holds that responsibility that you describe in your grievance?

R: Yes.

H: Is that because it's unacceptable in workplace for an Employer to allow abusive behaviour by one employee to another?

R: The short answer is yes, but I would like to qualify – in the university environment, tenure is such that the Employer must have a significant reason, related to the work responsibilities of the employee. My understanding of academic freedom and tenure is that, if the employee can and does perform his teaching, research, and collegial governance responsibilities – if the professor does this without reproach, and this was true in my case, one cannot say to a professor “you do not have a right to criticism, to an opinion”. If a professor endangers the security of another person, then yes, the Employer has a right to intervene. The Employer, in my opinion, has the burden to prove that there is a behaviour that could harm an employee – if not, the professor has a right to criticize, to make statements – there are protections regarding defamation which already exist – the Employer does not want to take the place of a court in this domain – in the domain of academic freedom, the Employer wants a domain that is safe – and this does not mean safe from emotional reactions – it's clear that people will have many emotional reactions in a university – there will be harsh criticisms – this is not a kindergarten – but when the statements become abusive – when one uses one's power to attack another individual – that begins to cause me to ask that the Employer intervenes – and in this case the Employer did intervene. This is how I see it. I would also like to add that I was exposed to a great deal of criticism from my colleagues, who criticized me in many ways – media, letters, etc. – this has happened many times because I am critical – never in my career did I ask for an intervention except for in the case of Professor St-Amant – this was because in my opinion, it went too far – there were criticisms of professors who came as guests to my courses, students were attacked – it's the only time I filed such a grievance and the results are clear.

H: Were your feelings hurt by these actions of this professor?

R: I don't even understand the question “were your feelings hurt?” It means, did you react emotionally? Yes, I had an emotional reaction. I certainly felt that it was unjust, I felt that the campaign by Professor St-Amant was unjust, I may have been angry, yes, I had emotional reactions.

H: So, did you learn from that experience how hurtful this type of action can be to a person?

R: Your question has an underlying assumption – it implies that when someone experiences an emotional reaction, it's equivalent to being hit physically – in my opinion, it's an emotional reaction – I am a human person who understands other people's

reactions – I experience emotions myself – but this is part of human communication – to separate emotional reactions like this and to say “you hurt that person” – I’m sorry, but I find this to be an unrealistic position because emotions form part of one’s societal interaction. We’re not in kindergarten, there are going to be emotional reactions. It’s clear. The important thing is that we can rationalize and we can say “what is this criticism, and is it reasonable?” We can rationally evaluate our own emotional reactions – this evaluation is essential to academic and intellectual life. All intellectuals know this. All professors know they will have emotional reactions but that their rational sides must win in their professional life. This is my position – I know that my colleagues have emotional reactions – this is useful because it causes a deeper contemplation – but the rational side must win. This is my response.

H: Dr. Rancourt, for the next paragraph – “members are bound by the collective agreement to observe norms of behaviour... Professor St-Amant has not... it is responsibility of Employer to intervene”. Is that your view today?

R: Yes, but I would add that the acceptable norms of criticism in academia include a large margin for criticism – it’s a broad spectrum that includes criticism of all kinds – the norm in the academic milieu is such that the Employer does not play the role of a parent – the Employer does not tell a professor “your criticisms are too sharp” – there is an animated discourse in the professoriate that is – it rubs off against egos – there was one case in my 23 years at the UofO where I had to complain against a chairman of a Department, and it was this grievance – the only time.

H: We’ll take the lunch break here and provide you with a full copy of this document.

*(Break for lunch, return at 1:37)*

H: We’re providing a full copy of the email. Returning to your blog postings with respect to the late Dean Lalonde. Are they still there today? You haven’t taken them down?

R: Yes they are still there. The blog is still active and there are hundreds of articles which are available.

H: I’m just curious, Dr. Rancourt, did you give any consideration to removing the material following Dean Lalonde’s death? His children, his wife still have access to this material.

R: Yes, Professor Lalonde’s sudden death perturbed me greatly. My family and I were greatly perturbed. It caused me to reflect on these questions. I mean to say that I asked myself the question – to be very frank, I said to myself – I looked back and I thought about the life of the man, essentially – the prizes he won, the compliments he received as a professional, and I considered how people would remember him – I concluded that my criticism

belonged to that global story of the man, and I decided it was not proper to change that story and the history of how he was recognized by different people – I would not have wanted a change to create confusion – in order to avoid confusion and error in the precise historical record, I think it's better that everything remains in place. It is certain that his death caused me a great shock – especially because I did not learn directly about it but from members of the university community. I communicated information about his death to members of my graduate student research group to inform them of his death – some of them thanked me for informing them.

H:                                Would I assume correctly that you would distinguish the comments that you have made regarding Dean Lalonde, and the materials regarding him that you have posted on your blog, from the comments made by Professor St-Amant that caused you such emotional reaction that we talked about this morning.

R:                                I did not say “such” emotional reaction, I did not qualify it that way, but in response to your question, I see several distinctions, yes – one distinction is that I am a professor who criticizes the University, whereas Professor St-Amant had a higher position in the power structure than I – he was a well-respected departmental chairman – he had influence regarding my reputation on my colleagues in my department – he also intervened in what I would call an illegitimate fashion in departmental decisions concerning me – so these are the elements that distinguish – also, the nature of it – I never made a sweeping attack on the capacity of a colleague to do research – I never said that a colleague did or did not do such and such thing in his courses if I did not have evidence based on documents – I never based my criticisms on what could be called “hearsay” in English – except if I posed questions – I could look facts and ask a question – I believe that is legitimate. I never made the kinds of extreme criticisms that Professor St-Amant made.

H:                                When you were dismissed by the University, would you say that you were angry about that decision?

R:                                Mmm – I would not say that it was the primary emotion – first there was a state of shock – I was perhaps naive, but I did not believe that the University could dismiss a full professor with tenure as easily as it did – I did not know it had that power and would use it as easily as it did – I was like a “deer in the headlights”, a state of shock – my colleagues told me it was unimaginable in the circumstances and that the Employer was just trying to intimidate me – so there was a state of shock – there was a profound feeling of injustice – I was outraged by the injustice and found that fundamentally wrong – I'm very sensitive to injustice – whether it's towards students, disadvantaged people in society – I saw this as a profound injustice and an abuse of power – that was my first reaction – I was not angry – I don't remember being angry – it was more, “ok, what am I going to do from this point on?”. I quickly proceeded to the next step – “how will the grievance proceed, what are the next steps?”. I turned my attention to this. So the short answer is, I don't remember having an emotion that could be called “rage” or “being angry”.

H: So I take it from that that you would disagree with me that you set out to take revenge on all the decision makers that made the decision?

R: Absolutely not, that's a complete invention.

H: Did you see President Allan Rock as being one of the decision makers in the decision to dismiss you?

R: I came to understand that President Rock played a large role, but initially I believed that the collective agreement had been followed and he had played that role – which was a distant role. As the years went on I came to believe that he played a very direct role, and I believe that it was he who ordered my dismissal. This is in relation to the role that I believe he played.

H: Is that why you started to refer to him on your blog as a douchebag?

R: I would like put that – your question is complicated because you said “started to” and that implies that I did it continuously – but I think I only made that comparison once. We could certainly look at the context of that.

H: Yes, it's important to know the context of calling someone a douchebag, I'm sure – so we'll put that on the screen.

R: Ok, so it's a document of March 15, 2011.

Delorme (D): It's entitled “University douchebag contest”.

R: I can't read it since I can only see the heading.

H: I didn't make extra copies of this but I can give the witness mine just to save us time.

R: Thank you. Ok, so it's an article where I'm comparing two instances of University presidents taking actions which I consider to be inappropriate, and I'm asking which one is more inappropriate – I use the insult “douchebag”. But I don't remember using this term more than once, so I object to this characterization “starting to”. One of the reasons I use a strong language like this – simple insults as we say – it's in order to lower the barrier so that others feel brave enough to criticize the university president – I have the strength of character to criticize the university president and I want to lower the barrier to criticize, even in a very light manner, the president or the dean. So one of the functions of my blog is to facilitate criticism by people who have less power – in this case students, student associations, etc. So I use expressions that they know well and use in their everyday language – to make it more normal to criticize a university president in their everyday lives – to encourage in them the audacity to criticize the university administration.

H: Your use of that terminology was partly to make the subject matter of your blog of more interest to students, is that right?

R: No, it's not a question of interest. It's about lowering the very real psychological barrier towards criticizing their university president. I believe that both students and professors should have this academic freedom to criticize the university president. Because there is this barrier in place, I try to lower it to make criticism of powerful figures more accessible. This is one of the reasons that I use this form.

H: In your ideal world – you want to be within a university environment where students call their president douchebag, professors call one another douchebag, that's what you aspire to?

R: No, I think that's a very bad characterization of what I've tried to explain.

H: But is it accurate?

R: No – it's false. I explained that I allow myself to use this language that many people do not allow themselves to use, because I want to facilitate criticism. A third party will say “ouch – if he can go so far, that gives me room to make my own criticism”. Another way of looking at it is to show “if the president is someone who can be criticized like that, then I can criticize by way of a letter to the editor”. This does not mean, unlike your conjecture, that I want this to be the language everyone uses. In fact, I am of the opinion that a criticism in a student newspaper, for example, that uses insults has a much smaller impact than a criticism that does not use insults. When I write to the student newspaper, I use a more academic language – there are many examples of this.

H: I perceive a dissonance in your answer. You say on the one hand that you write this material as a lesson to students, and yet you say you wouldn't want an environment in which students are using such epithets.

R: Mr. Harnden, it will be a long day if you misinterpret my answers like this, but let me see.

A: Wait a minute (*repeats question...*).

H: He says he wouldn't want an environment in which students were using such language, as I heard his answer.

R: So, it's a total spin on my answer. Listen: I did not say and I don't want to say that I'm trying to give students a lesson or direct them in what kind of language to use – students are adults and they know they are responsible for choosing their language depending on the context – I'm not trying to give a lesson about what they should say – what I said is I'm making an effort here, I'm giving an example in order to show people that they can dare to make



criticisms. I'm bringing down to earth, in order to lower the barrier – I'm not trying to give a lesson such that students start using such and such language – but I'm also not against this language – one's language is one's own responsibility. I'm against removing academic language in order to replace it with street language. When I write in a student newspaper I use academic language. When I write on my blog for a certain political purpose of having a certain influence, I choose the form that I desire. Mr. Harnden, I would appreciate it if you would confirm you understand my answer.

H: Are you saying that when you write on a blog called *U of O Watch*, which is a blog targeting the student community, that you can use inappropriate language that would not be acceptable for a student newspaper? Is that what you're saying?

R: I never said this language was inappropriate. But this language, which may be appropriate on the blog, might not be the most powerful language in the student newspaper or in a letter to our colleagues – each forum has a form that is most effective – one chooses one's language in order to be most effective and to accomplish what we are trying to accomplish – each medium is used optimally given the medium in question.

H: I'm going to ask you to confirm that you published a further document on your blog referring to President Rock.

R: I can confirm that I wrote this article. It was published on my blog *U of O Watch*, and can be found there still today.

H: This reflects an extensive amount of research on your part. Are you sure that you didn't undertake this with a goal of exacting revenge on Mr. Rock?

R: I can say that with absolute certainty. I can explain my motive to you.

H: Please do.

R: One of my motives, as I saw it at the time – first, allow me to explain the title: in the title there is the term, in quotations, “ethically challenged”. That is cited from an article in the *Ottawa Citizen*. A journalist researched certain behaviour of Mr. Rock and who concluded, in unambiguous terms, that Mr. Rock was “ethically challenged”. She was unambiguous – she said, essentially “Allan Rock is ethically challenged”, and this was the theme of her article. I found this article after doing a Google search on Mr. Rock, and I read the reasons for which the journalist had concluded this. From this I learned how Mr. Rock left politics. I said to myself, “how could the selection committee of the university not have seen this article?”. All it took was to do a Google search and see what had been said in the reputable media. They would have immediately found this article and seen that the Ethics Commissioner of Parliament had given Mr. Rock a directive to not do something and he went ahead and did that. So I said, how could the Selection Committee not have been aware of this? And I said to myself, who was on

this committee, who did the work of selecting Mr. Rock? I had the opportunity to criticize the Dean, Gary Slater, who was the Dean of the Faculty of Graduate and Postdoctoral Studies – who I know personally – and I said to myself “the public needs to know this – all these things that show a real lack of principle in professional actions and recognize that the university committee did not do a good job”. So there was an institutional error, and I wanted to prevent it from happening in the future. So I thought of creating a document on the blog *U of O Watch* that listed the errors committed by Mr. Rock, and I thought this could help the university community – that we should not just rely on the quality of a man based on the position he holds, but to look at what he did. This was the motivation of this blog article. Also, another reason was that I found that Mr. Rock committed injustices towards students – decisions he took, and I wanted to participate in order to defend students from whom academic freedom had been removed – this was another motive, that was a second motivation for this article. You’ll see that this was not something I did at once, but it was built up over time. You will see that it says it was “last updated” in February 2011. So there were additions made at certain times. It’s a significant article on this blog, and it can be reached by clicking on an image at the top of the page and anyone who goes to the blog can see this list and go directly to this article, even if it dates from 2010, you can go there from the first page of the blog.

H: Just curious – do you know the expression “what’s sauce for the goose is sauce for the gander”?

R: No.

H: In undertaking this significant research project about Mr. Rock...

R: I don’t accept that it was a significant research project – it was simply some Google searches – nothing at the level of my scientific research and my articles published in journals, etc.

H: Well in undertaking this endeavour, did it cause you any concern about the emotional harm it might cause to Mr. Rock?

R: No, it was not a concern – I said to myself that Mr. Rock is used to this kind of criticism – after having dealt with the Ethics Commissioner I felt he could handle this – he was a federal politician and I think he’s used to this.

H: I’ll show you a copy of an email, not sure if you’ve seen it? It’s an email from a gentleman to President Rock, and as I say, maybe you haven’t seen it.

R: Yes, I’ve seen it, but I don’t remember where, maybe in your documents but I’m not sure.

H: Do you know Mr. \_\_\_\_?

R: No idea who that is.

H: He's not one of your, shall we say, supporters?

R: I have no idea who he is. I never saw that name before seeing this email.

H: Let's move on – who was Marc Jolicoeur?

R: He was the former Chair of the Board of Governors, if I'm not mistaken.

H: Was he in that role at the time that the decision was taken to dismiss you from employment?

R: I believe so. He was replaced later.

H: You knew that he was a lawyer practicing in the City of Ottawa?

R: At first, no – I'm not sure at what point I found out the Chair of the Board of Governors was a lawyer.

H: At some point you informed yourself he was a lawyer practicing in the City of Ottawa?

R: At some point I knew. I'm not sure if someone told me, or what.

H: Do you understand that the Law Society of Upper Canada (LSUC) is the body that governs lawyers in Ontario?

R: Yes, absolutely.

H: Would you agree that a lawyer's reputation is a particularly valuable asset, in terms of his or her success in practising law?

R: Not more than another professional – engineer, professor, lawyer – I don't see more of an importance in one profession than another.

H: You agree that one's professional reputation is an extremely important asset?

R: What does extremely mean? In comparison with what? Yes I agree it's something important.

H: That's why you were so upset about Professor St-Amant's comments about you, it damaged your reputation, right?

R: We already talked about this. I said that Professor St-Amant's behaviour was beyond acceptable – but yes, it was a component. He was using his position as a department

chair. It wasn't just a simple blog post in which parties could respond. In fact, Professor St-Amant often made comments on my blog.

H: I want you to confirm that you posted this article on your blog, and whether it stays there today?

R: Yes.

D: Article entitled "Law Society acknowledges ethical breaches by lawyer Marc Jolicoeur".

A: Exhibit 126.

H: Do you agree with me that the headline suggests that the Law Society of Upper Canada determined that Mr. Jolicoeur engaged in ethical breaches?

R: No, the word in the title is "acknowledges".

H: Would a reader conclude that the LSUC made a determination that Mr. Jolicoeur engaged in ethical breaches?

R: No, I think a reader would find it to be an ambiguous title and would want to read about what it could mean. The goal of such an ambiguous title is to cause the reader to read the article.

H: Dr. Rancourt, I really want to be clear on this – do you not have any concern that readers of your blog would read that title and not go further and simply conclude that the LSUC determined Mr. Jolicoeur engaged in ethical breaches?

R: I'm not concerned by this and I will explain: if a reader read this ambiguous title and came to a firm conclusion, as you say, then that's not a credible reader, and this person's belief has no impact on Mr. Jolicoeur's reputation. To complete my thought – credibility is impacted by the impression that a reader has credibility and can have an impact on a professional reputation – a nobody reading something on the internet does not have an impact on the professional reputation of a prestigious lawyer. I do not believe that your proposed mechanism for impact on professional reputation has merit.

H: I suggest to you that you're intelligent enough to know that many readers would draw that conclusion, and you posted this title because you wanted to take revenge on Mr. Jolicoeur.

R: Totally false. I wanted to show that even the chair of a large institution could have ethical lapses, and I did. Your allegation of bad faith on my part is false, and I don't believe it is a question of intelligence, as you suggest, Mr. Harnden – it is a question of motivation and intention.

H: I agree it's a question of motive. To close this off, you would agree that the Law Society has made no finding that Mr. Jolicoeur has made no ethical breaches?

R: Absolutely, I agree with you.

H: You mentioned the name Nathalie Des Rosiers last week – she was at the meeting at which you were barred from campus, is that right?

R: It was the December 10, 2008 meeting at which the Dean informed me that I would be dismissed and the Vice-President Academic informed me I would be barred from campus with police force. Present at this meeting, not counting police waiting outside, were the Dean, Andre Lalonde, the VP Academic, Robert Major, and Nathalie Des Rosiers, who at the time, I believe, was the VP Governance. I was also there, and no one else.

H: You're aware that Ms. Des Rosiers was recently appointed Dean of Law at the university?

R: Yes, I'm aware – there was a press release about this.

H: I would like you to confirm that you posted this blog concerning Mme Des Rosiers.

R: Yes, it is a blog of November 11, 2009, "Call for the resignation of Nathalie Des Rosiers from CCLA". I confirm I wrote this blog and it is on *U of O Watch*.

H: Could you clarify what position Mme Des Rosiers held at this time?

R: Mme Des Rosiers occupied a post called "General Counsel" of the Canadian Civil Liberties Association (CCLA). The post of general counsel, to explain, is essentially the director of the association – it's the boss. It's the equivalent of president of a university, but for this association – it's the CEO.

H: What motivated you to write this rather lengthy letter to Mme Des Rosiers's Employer providing your views regarding her conduct? It wasn't revenge was it?

R: No, it wasn't motivated by revenge, Mr. Harnden. If you look at the blog, I wrote articles about dozens and dozens, perhaps hundreds of people – upper administration people, departmental chairs, among these people are those who were involved in one way or another in my dismissal. To answer your question, no – there was no bad faith. I would like to read the article if there will be further questions.

*(Afternoon break – return at 3:15)*

H: Des Rosiers was no longer an employee of the university?

R: No, I think she was still an employee – to my knowledge she was still paid by the university – at least for the first year – I think she was on administrative leave and was paid at least for the first year.

A: What was the first year?

R: Probably 2009/2010 academic year. No wait – I recall more information – the description about her on the University's website in the Faculty of Law – the website remained showing her professor during the entire time she was with the CCLA – I know she was paid during the first year because this was public information – her professor's website stayed up so in my opinion she was still an employee at the UofO.

H: But in any event, she's off doing this role for the CCLA, and you felt compelled to write this lengthy letter with a lengthy recitation of your reasons – why were you motivated to do that?

R: I'm motivated to write my blog – the primary motivation is to write my blog, to communicate things via my blog. It's an act of public participation. That's always my motivation – to participate in discourse, debate, and to change things. We can debate whether my motivation was appropriate or not – I had documents, etc. – I had reason to believe that in terms of her professional record, Nathalie Des Rosiers was not adapted to a leadership position in an association dedicated to defending civil liberties. For me, an association that defends civil liberties is very important in our society – there are very few of these associations, and we must have the best associations possible – the strongest and the most critical in terms of defending civil liberties – I was familiar with the actions of her predecessor, Borovoy, and I admired the degree to which Mr. Borovoy was critical of very powerful figures in society – so when I saw Mr. Borovoy, an icon of civil liberties in Canada, replaced by someone who had a professional reputation stained with problems related with civil liberties, I said to myself "this is no good, I must publicize my criticism". I know Nathalie Des Rosiers from having met with her face to face several times – she is a very charming and kind person. I saw her once at the Senate at the University of Ottawa, and once at a public talk about civil liberties – I have nothing against her as a person – I appreciate what she said at the public talk, which featured the Chief of Police and others – I appreciated what she had to say more than other speakers – I have nothing personal against Mme Des Rosiers, but I maintain that the director of one of the most important civil liberties associations in Canada must have a very good record and not a history stained by problems in regards to civil liberties. The real question should be "is my criticism well-documented, is it correct" not "did I dare to criticize this person".

H: You say your motives were perfectly correct, and I guess you would say that it's a coincidence that these various blogs all connect back to the dismissal and involve the key decision makers in your dismissal – that's a pure coincidence?

R: No, it's not a coincidence – you are the ones picking the articles out of the hundreds of articles I have written. So on the one hand it's not a coincidence because you are picking the articles and on the other hand, I write about what I know. Access to Information law only gives me information about the administration – not about professors. It's not a coincidence, it's constructed that way.

H: I'll note who's CC'd on this email. The first one is Marc Kelly – who's that and why does he get the first CC here.

R: Marc Kelly is a student directly concerned by the article concerned. See pg. 3 – the title is “political repression of a student”. Here I say “you negotiated an agreement with Mr. Kelly...” – I described an incident that I consider to be wrong concerning Mr. Kelly. It's normal to tell the person about whom I'm writing, when I send the email. This blog article is a copy of an email that I sent. So, when I sent the original email, this is the list of people in CC. The student Marc Kelly, different associations at the UofO and elsewhere, employees of the CCLA, and all the executive and board members of the CCLA individually. There were other exchanges, there was a response, other exchanges following this email, of course. I believe Des Rosiers herself responded.

H: Can you confirm that you distributed this to media representatives?

R: I don't remember doing this – the people named are in CC and it was made public on the blog. I have done that in the past – but I don't remember that in this case.

H: I point you to the second CC, it says media.

R: Ok, yes, then I sent it to some journalists who would be interested in this topic.

H: Finally, Des Rosiers was still an employee – do you have any misgivings about your action in doing that, today?

R: No, not at all – they were reasonable criticisms – I have nothing against Mme Des Rosiers – she's in the Faculty of Law – I evaluate her contribution to the institution independently – I evaluate her quality as a dean or as a senate member – I'm completely capable of separating her actions described in my letter from her actions in other domains – I do not regret making my criticism – I think it was a valuable criticism, and she responded to specific points.

H: Move to another blog posting about the same individual. Seems to be entitled “Ethically challenged Nathalie Des Rosiers General Counsel”.

A: Exhibit128.

R: I'm sorry, I don't remember the content of the video clip in this article.

H: We're not relying on it. Did you write this article and title?

R: Yes, I'm responsible for it.

H: Want to turn to another individual – Professor Joanne St. Lewis. Can you confirm that Ms. St. Lewis is an Assistant Law Professor employed by the University of Ottawa?

R: I can't confirm it exactly now, but I know she had that position.

H: Can you confirm she taught in area of equality rights?

R: No, I do not have that knowledge.

H: Can you confirm that she's a black woman?

R: Yes.

H: I understand in the Fall 2008 she undertook an assignment given to her by President Allan Rock, do you recall that?

R: At the time, no one knew it was Mr. Rock who had given her that responsibility. But it was made public that she had made a report criticizing a report of the student federation – this report was made public – I think you are referring to that.

H: Can you confirm that the subject of her report related to allegations in a student union publication that there is systemic racism at the university?

R: I would not call it allegations – I would say that the student union, their Student Appeal Centre, one of the services of the union, did a study on the possibility that there is a systemic racism in the cases of academic fraud pursued by the university against students. It was a study that included hundreds of students – they concluded that there was effectively a systemic racism in the way the university handled these alleged fraud cases. That was the student report, and it was this student report that Professor St. Lewis criticized in her own report.

H: And you, in February 2011 decided you would write a blog on Ms. St. Lewis's report?

R: No, and I will explain – I decided to write a blog on Ms. St. Lewis's report in December 2008 – right after the publication of her report. That was the moment at which I decided to criticize the St. Lewis report. And this blog article is very detailed – it's a deep criticism of the St. Lewis report. Then, I communicated my blog article to Mme St. Lewis – I emailed her.

A: Exhibits...

H: You chose the title of the February 2011 article?



R: Yes, I choose the titles of my articles.

H: Last week, you told us “no one ever told me to take down my blog articles”?

R: No, I said the university never told me to take down any of my blog articles. That’s what I said.

H: My question is: Professor St. Lewis retained a lawyer who wrote to you and asked you to take down this blog because it was defamatory of Ms. St. Lewis?

R: More than that, there is a civil lawsuit for \$1-million regarding this blog – this lawsuit is entirely financed by the UofO against me. So, in the context of this lawsuit, of course there was a demand that I take down the blog. I can add that it’s clear from the documents that I have that Professor St. Lewis decided to pursue this lawsuit after she was guaranteed funding from the university. This is in the testimony of Mr. Rock in the lawsuit. I could bring a document that shows an email from Ms. St. Lewis to President Allan Rock, which was sent February 14, 2011 which says essentially “this affair – I will ignore it, but I would be happy to integrate myself into whatever strategy you want”. Some short time later, they offered her unlimited funding and she hired her lawyer and initiated the lawsuit against me. It’s a case where there is a difference of opinion regarding defamation – I firmly believe that this article is a fair comment which is protected by defences against defamation and I accept the responsibility regarding this blog – I accept that one can pursue me in the courts, and I intend to establish that this article contains an expression of an opinion protected by the law. I take on that responsibility. I have no money, but I represent myself in this action which has lasted two years – I’ve been before judges about twenty times, and we are in the preliminary motions at this point. So it’s ongoing, and I’m of the opinion that the action represents maintenance and even champerty because, in the statement of claim, Professor St. Lewis says she will give half the punitive damages to a scholarship at the Faculty of Law at the UofO. So I see that as an abuse and it’s something I tried to rectify. It’s ongoing in the Court.

H: Return to my question – focus on that – did her lawyer write to you to take down the blog and did you refuse to do so?

R: It was a command, not a request – I responded that I would be happy to discuss informally with him and/or his client in order to resolve this matter, and he responded it was not up for discussion, that I would be sued, and that if I wanted to minimize the damages against me that I must remove my blog immediately. At this time I said, ok, I will wait to see your statement of claim to see more, then we can discuss further.

H: When you told us this morning – in your grievance regarding Professor St-Amant – members are bound by the collective agreement to observe commonly accepted

norms of fairness – is your blog, expressing the term “house negro” about your colleague within those norms?

R: Yes, and I would like to explain further. When you pose this question you use the term “house negro”. The term – in the same way you use the term Anarchism, without paying attention to the precise definition – this term has a precise definition – in fact, it’s a very precise criticism – it’s a political criticism – the equivalent is “roi nègre” – it’s used in Quebec – I explain the definition in my blog – the person who used it, Malcolm X, the civil rights icon in North America – I used a video clip of him explaining the modern context and its meaning – it’s very dangerous to pose a question such as yours without defining the term, because the term “house negro” causes a “taboo-word” reaction in the person who hears it. So we have to step back and say “what is the meaning of the term” – in my opinion, this term is chosen to express exactly what I wanted to express in this article. Otherwise, in the case of the civil lawsuit, I’ve been able to procure an expert statement about the precise meaning of the term “house negro” – it’s from a former member of the American Congress, Cynthia McKinney – who is black – who describes how the term has the meaning that I meant it to have when I used it. I do not want to allow the term to have the meaning ascribed to it in ignorance – the term has been explained in the mainstream media, in the journal Law Times – it’s been explained, and I do not want to risk you posing questions that may be prejudicial against me regarding the use of this term.

H: I suggest to you when you drafted that title, you were well-aware that your action would cause this woman the deepest pain? And did you care?

R: Completely false. Completely false. I cannot know the emotional reaction of a person I don’t know...

H: Do you care whether she had that emotional reaction? (*Yelling*)

R: ...I can’t know her emotional reaction – this is how I saw the documents in front of me. As I said before, the emotional reaction is secondary – the first question is “is it true?”, the second question is “is it a fair comment?” – those are the important questions, this is what I asked myself – I did not stop at the kindergarten business of “who would have what kind of emotion”. I chose these words in order to be clear – there is no expression – linguistics experts – and I have two of them – tell me there is no equivalent to this term – unless one wants to write a whole paragraph to explain it – there’s no equivalent and why shouldn’t we be allowed to use it? I think we have the right to use it.

H: You’ve spoken at some length about your understanding of the law of defamation – have you talked to a lawyer about the law of defamation?

R: Uh – can I appeal to solicitor-client privilege?

H: Not asking about what he told you – have you taken legal advice about your blog articles?

R: I did not take advice before posting it – I did not ask legal advice about this blog article before posting it, as far as I can remember. I asked legal questions to lawyers at different times, but for different reasons – e.g. were these words protected under the usual defences for defamation.

H: *(Asks question about talk at Queen's University)*

R: I gave two talks at Queen's – one... another was more political.

H: I'll put on the screen a transcript of your remarks at Queen's in 2008 and you talking to a lawyer – not your “house negro” post, but you talking to a lawyer in general about your blog posts.

R: I don't recognize the authenticity of this document.

H: You gave the talk so we'll put to you the record of your words.

R: I did not write this document. It does not come from me and I don't know the origin of this document.

H: That's fine and if you say “this is not an accurate record of what I said” then you can say that. I'll draw your attention to first paragraph –

A: What is it called?

D: This is UO00001670.

H: Just look at the title first – this may help you recall – see the title “On the responsibility of university to create anarchism... anti-hierarchy activism” – was that the title?

R: Yes, I gave a talk with that title at Queen's University.

H: I'll give you opportunity to read through first paragraph – if you see something that doesn't accord with your recollection of what you said please tell us.

M: Can I ask what the relevance of this is?

H: We're getting down to – he refers to talking to his lawyer about content of his blog and says his lawyer was white as a ghost and told him to take down these points immediately. I'm going to suggest to him that he was given advice from his lawyer about inappropriateness of his postings, which he chose to disregard.

M: Perhaps we should exclude the witness.

M: I have some concern because we had a line of questioning – Professor Rancourt was asked about a posting in 2011 – he was asked “did you take advice about content of material on blog?”. His answer was “I didn’t take advice before putting these words on the blog” – that’s in 2011 but this is a conference from 2008 – how is that relevant?

H: Not suggesting that – should have repositioned – thought I said “setting that aside” – thought I repositioned the subject matter – perhaps I was wrong to not make that crystal clear that we’re not dealing with the St. Lewis blog.

M: I am going to object because we’re talking about whether he took legal advice in 2008 – I didn’t immediately object but it’s not proper – can’t ask somebody if they took legal advice.

H: I understand you can but that the improper part is “what was that advice?”. I also understand that if an individual took that advice and shared it in a public forum that’s a waiver of the privilege – no longer an obstacle to pursuing that information here.

M: Ok, if we’re dealing with this document as opposed to the posting in 2011, this is a document that was available to the university before the termination – no action was taken against Professor Rancourt for this – it’s one thing to say “there are things that have happened since he was terminated” – but this comes back to my question “are we able to open up everything that ever happened at the university” – subject to him saying “I’ve never taken any order to do this” – have to ask him what he talked to the lawyer about, not just if he spoke to a lawyer – this is a circumstance where university knew about this – not about discipline to Professor Rancourt or anything like that – this did not form part of the opening statement.

H: McGee’s correct – not part of grounds for dismissal – we pose the reference to put in context evidence of last few days – blog posting and Professor Rancourt’s purported view that they were not defamatory – intent was to point to the fact that he was told in 2008 that material he put on his blog was that lawyers said he must take it down immediately – we suggest this undercuts his credibility – maybe Mr. McGee’s right – would be content to ask him if this is an accurate record of words he made at this occasion – we can leave it at that.

M: I don’t think it’s relevant.

A: I agree with Mr. McGee – very peripheral issue – so wide as to apply to any blogs whether these blogs are before me or not – I agree with Mr. McGee.

H: Ok, we will not use this document for this purpose but intend to use it for another purpose later.

*(End at 4:17)*

Wednesday, May 22, 2013

*(Continuation of University's cross-examination of witness Rancourt)*

*(Begin at 9:35)*

H: Dr. Rancourt, just to start out – are you familiar with concept of cyber-bullying?

R: I am familiar with it in the sense that I've heard the term and it's been discussed in the media recently – in this sense, yes, but it's not a phenomenon that I've studied. While there's a pause, I'd like to add that there's one response that I made yesterday that I'd like to take one minute to complete.

H: Perhaps you could tell us the subject matter?

R: It would take 30 seconds – just to give more context to exhibit 121 which we spoke about. I think the context is important.

H: Oh, the “you can't fucking cheer a burning cop car” exhibit? You have more context for that?

R: You have given it an interesting title – the title is “Symbiosis of Anarchy and Hierarchy” – I want to give more complete context – some more context is that in June – because this was an article published January 2011 – so in June 2010 (a few months previously) – it was the G-20 in Toronto – and at the G-20 in Toronto there was violence in the streets and a police car that was in flames, and this was widely represented in the media – the conference that I attended in January and about which the article was written was the North American Anarchist Studies Conference – and the point was to study all aspects of violence in public protests – one of the subjects studied was “Diversity of Tactics” – this is one of the big themes in this domain – and my article brought forward a criticism of a topic that was discussed at this workshop – the image you see on the blog, where you see a red square and a burning car – the image on the blog article – was an image given out in the conference package as a bookmark for the conference book – so I scanned that image and put it on the webpage – it represents a burning police car – that's the only thing I wanted to add for context – and I want to say it's very important in these conferences to speak openly and without restrictions about violence in society, and if we may not speak openly with frankness and all the terms we wish to use about violence in society, then there is a problem. The last point that I'll make is the following: when students, or anyone – community member, student – comes to ask me a question about one of my articles, I always take the time to explain to them the context – what it means, what it doesn't mean – and I'll tell them about diversity of tactics – I'll put it in context and try to explain it – I do this carefully, through emails, face-to-face, I take the time to do this – if someone in the community has a

question or is preoccupied with these subjects, I am always open and I take the time to speak to the person – this is how I want to complete my response.

H: Dr. Rancourt, you do understand there are students at the UofO reading this material you post who don't have this rich opportunity to speak to you and get this context which you say is so important?

R: No, I don't have evidence that there are students who have read this article without speaking to me – I don't have evidence of a wrongdoing that could have arisen from this that would have been intentional or that would have been interpreted in such a way – I don't know – students are adults and have very good discernment – they decide quickly what is of interest to them – I have not experienced the phenomenon that you suggest, Mr. Harnden, which is a great vulnerability on the part of students – I've rather seen a great sophistication in the media and electronic media regarding what they are interested in – the type of phenomenon where someone can read something and do something violent – I've never seen that – what I'm familiar with is a university environment full of questioning – ideas flying in every direction – everything that has to do with the question of abortion – large questions of morality – disturbing and difficult images and questions – students have the capacity and experience in dealing with these questions – even when the administration does not permit certain posters and meetings, students have great maturity and ability with these topics. So I don't accept the premise in your question – these are not elementary school students.

H: I'd like to return to your initial response to my question – you've dismissed any concern about the content of your posting on the premise that "I don't know who reads this and what they understand" – you do understand that the internet is...

R: My answer is simply that I do not have this data. It's obvious and trivial that anyone can do a Google search, choose to go on whatever blog – that's obvious and we don't have to talk about that – but I don't have statistics, except for a counter on my blog starting from the beginning of the blog – that's the only indicator I have. This indicator, if we believe it, shows that there are very few visits per article on the blog.

H: You would agree with me, would you not, that you have no idea how many students have read this and the manner in which it influenced your thinking?

R: I've just explained how we could estimate the number of times an article has been read, but it's such a rough estimate that I would tend to agree with you that we can't know how many students have read the blog. What was the second part of your question?

H: You have no idea how many students have read this exhortation to burn cop cars would you? Would you? (*Yelling*)

M: Objection: you can't beat a dog and...

H: Let me rephrase – you have no idea how many students have read this?

R: Yes, but I've said that in the previous days – I have no control over the emotional reactions following my communications – when one communicates it's reality that one does not control the interpretation. I would even go so far as to say that this is obvious to all authors and commentators – human beings are complicated and we can't predict their reactions – my goal is to contribute to a discourse regarding these grand questions in a specific domain of study – and I do it in a way which, I admit, is provocative, direct, and challenges certain theoreticians with argument and evidence – I don't control how people react to it – yes: I consciously admit that I do not control that.

H: As an individual who aspires to returning to be a professor at a university, do you have any concern about a student reading this article?

R: No – I don't have this concern in the sense of your question – on the contrary, in my discussions with students, I encourage them to read all points of view, and all available articles if a domain interests them – I encourage them to read these articles – if I speak about my articles, I put them in context – I explain the reasons for the style and tone – but I recommend many, many articles, from hundreds of points of view. But I think that your question suggests that we must impose a censure on certain points of view – and I am completely against this notion of education. I'll tell you that I don't remember a single time a student approached me to talk about an article he read on the blog *Activist Teacher* – it's not something we often talk about in physics.

H: Maybe we could just take a quick pause – there's a lot of interference in the translation.

M: Would it be helpful if I read back the last statement?

H: Yes.

M: "I am absolutely against this notion – I can tell you that I don't remember a single time a physics student came to speak to me about the material on *Activist Teacher*".

H: And...

R: No I think there was something I added "it's not something that comes up often in physics courses".

H: So based on that logic, are you telling us that as a professor, you would be indifferent to what you put on the *Activist Teacher* blog?

R: No, I never said I was indifferent – all my articles are written with the intention of communicating with the targeted audience – that's it – there's no indifference.

H: So let's explore your statement a few moments ago about being absolutely against censorship – should we understand you to be saying you would be against self-censorship about anything you might say on your blogs?

R: I don't really have a response – I don't even know what you mean by “self-censorship” – when we choose to write something, we make a choice.

H: Sir, you've raised the concept of censorship – are you telling me you don't understand the notion of self-censorship?

R: If you mean that the individual, given social pressure, does not communicate something that the individual would want to communicate and thinks is important to communicate – I would recognize that perhaps there is an internal battle that happens within the individual – social pressure vs. what the individual wants to say – so yes, I would recognize that that is a phenomenon that exists.

H: So picture this, Dr. Rancourt: you return to your professorship at the UofO – tell us what self-censorship you would engage in? Tell us that?

A: Are you saying – in relation to that blog? Articles in general?

H: The material he posts on those two blogs or anywhere else on the internet.

M: Is the question “self-censorship” in the way he described?

H: Perhaps the term “self-censorship” is lacking in clarity for the witness. In what ways would you limit what you post on the internet?

R: Well – there are two parts to the response – the first is that, in the context of a course, the choice of material depends on the course – the subject and objects of the course – in the context of a specific course, it depends on what type of course it is – there is material that is pertinent – so it's a professional choice of pertinent material for the course – in the context of research, there is a choice that is made in relation to the nature of the research and the domain of research – so, if I direct students in physics research, it's not a relevant point, if it's my own research, I choose what I study. The second part of the response is: if, in the context of my work, the Employer wants to have a discussion related to my blog, I'm very open to that discussion – and if the Employer wants to explain to me the concerns of the Employer related to my blogs, I'm very open to having that discussion, and I'm very open to seriously considering, if the Employer has objections, to taking advice, to discussing, and to taking action following the result of that discussion – but there never has been an opportunity to have such a discussion because my Employer never, never signalled to me that there was a problem with any of the content of my blogs. And otherwise, if I could respond by referring to an exhibit that is already in evidence – my CV, exhibit 115 – I'll just find the right place – oh, it's not what I had in mind – no, it was



the annual work report that I'm thinking of – my blogs have always been a part of my annual report, and I included them in the section “Community Contributions” and research in that area – there were three blogs included in this section – *U of O Watch*, *Activist Teacher*, and *Climate Guy*, which refers to climate science, global warming – if you want to see strong emotional reactions, it's on *Climate Guy* that you'll find them, because people become very “hot” if I can use that word, when global warming is the subject of discussion.

H: Are you finished sir? Well that was an interesting meander, but I would like an answer to my question – we're going to pursue this until you respond to it – if you return to your role as professor, what, if anything, would limit you posting material on your blogs?

R: The things that would be a limit to my expression are the following: the criticism I receive, I take it in consideration – the criticism of readers and members of the community, university, etc. – so all criticism I receive – and also, I have the practice of posting all criticism, without censorship, on my blogs – the only times I censored the criticisms were when the text was, in my opinion, completely useless – the spam, the noise, the blah-blah – so I post criticisms on my blog, and I read and consider them. That's one thing. Another thing is, if my Employer has something to say, obviously I will take it into consideration – I will have a discussion with my Employer – this may be informal, one-on-one, as I've had in the past with chairmen and deans – and if there's misunderstanding, I can appeal to other people – the Union or otherwise – this is the kind of restriction I can foresee regarding the content of my blogs. But this, I'm inventing it completely – it's in the future and I haven't had such occasions to discuss with my Employer.

H: Could I respectfully suggest, Dr. Rancourt, that you're not focussing on the question?

R: Pardon me, I would like to respond to the question – what did I not respond to?

H: What in your constellation of morals governs your decision making about what you post on the internet? Set aside the Employer. What governs your morality – would you post racist material, would you exhort people to violence, would you defame people? Do those things limit your posting?

R: Oh-la-la that seems to be a very loaded question, Mr. Harnden, because it suggests that I do not have a moral standing, and I reject that notion. I have learned that what you or others might consider to be a racist statement might not be – so now we're into the territory of censorship – your notion of what should be my morality – I reject that notion that Mr. Harnden must impose on me a certain morality. I've never done the extreme things that you suggest, so your question is invalid – if someone, the Employer or someone else claims that I have done the things you say I have done, I ask to be heard, I ask to have the right to a defence – if one wants to accuse me of defamation I ask, “was there a just and fair determination if there was defamation?”

and “do I have the protection of fair comment?” – fair comment does not mean that the Employer finds it alright – it means that someone in society with the same data and facts could come to the same conclusion – not the majority of people: one reasonable person with the same data – so if you accuse me of such things, I request the standard of truth and the ability to express my opinions in society – because these are opinions.

A: I did not understand – you said “a fair comment means that someone in society could reasonably come to this opinion” – are you saying that a comment is fair if one person could come to that conclusion?

R: Yes, it’s the legal concept – fair comment depends on if one person could come to the same opinion and accept the opinion based on the facts the opinion was constructed on – one has to understand that the fair comment defence only applies in cases where the subject of the expression is of a public interest.

A: Please just repeat...

R: Yes, the fair comment defence only applies when the subject is public and when it’s of a public interest – so the courts have determined that the balance between freedom of expression and the right to protect oneself against defamation balances, in the case of a public interest – e.g. regarding institutions – is managed by the fair comment defence. The most famous case is a radio broadcaster who called someone a Nazi and a member of the KKK, etc., but it was in the theme of a subject of public interest, and the Supreme Court found that the fair comment defence applied, even if the statements were very extreme – the criticism in the context of this radio show could be understood by listeners and was justified given the factual context – so the person was not at all a Nazi or a member of any criminal organization, it was just a person who made criticisms of a school board or something. That’s just an example.

H: Let me clarify – I wasn’t accusing you of racism or anything of the sort – I was trying to assist you – I’m giving you an opportunity to explain to the Arbitrator how you would conduct yourself. What would you do to govern yourself? I want to give you a chance to tell us something that would govern what you write?

R: Excuse me, Mr. Harnden – I never said that nothing would govern what I write – that’s a spin on your part – I am governed largely in the same way I have always been governed – I’ve never made horrible statements that, as you say, would be unacceptable – I’m not a racist person – my spouse is a person of colour, my children are people of colour, I fight against racism in society and I have an established record regarding that – when I was a graduate student, I was a “big-brother” with Big Brothers of Canada – it’s an association that helps boys in their personal development – I did that and my “little brother” was a black boy, and I contributed a lot to that child’s life. I have always been against racism in society. But I believe that the proper way to fight against these types of injustices is to write with force, to wake people up, and to cause a deep discussion in society – this is what I’ve always done, but I adjust my media, social,

and community contributions in relation to criticisms I receive, and if my Employer has criticisms, I'm prepared to hear them. So, Mr. Harnden mentioned violence – Mr. Harnden wants to have me say I'm someone who promotes violence and who wants to see a state of violence break out in Ottawa, something like that. This vision, in my opinion is a vision simply used to attack me, because it is false – completely false. I think that the best way to fight violence and crime is to talk about it openly and to emit our most profound opinions about the nature of violence and on the motives of individuals, as we understand them and try to understand them – the motives of individuals who contribute to violence in society. And if, in the public discourse, we have the opportunity to engage with the young who are involved in violence, to do so and convince them to take another path – and I've had the occasion to do that many times. So, for me, the questions of Mr. Harnden are gratuitous accusations uniquely intended to satisfy the needs of the Employer, perhaps based in fear and ignorance.

H: I can understand that you would have concerns about my questions – I can really understand that – but I reiterate: I was not making accusations about you making racist postings – I was asking what might limit your postings if you're reinstated, and you've answered that. You seem to relish...

R: No...

H: I didn't interrupt your answers, let me finish my question!

M: The witness may clarify...

A: I'm going to let the counsel finish his question.

H: Dr. Rancourt, can you tell us (...) which is (...) defence of fair comment?

R: If I understand, you want me to speak about cases where the defence of fair comment did not apply?

H: Just trying to determine if you discern whether there are cases that are not protected by the case of fair comment?

R: Yes, of course – have to know what is protected and what is not protected.

H: Tell us what you know about the latter?

M: Objection: is this witness being asked to explain his understanding of all cases?

H: The witness said he wanted to talk about cases.

M: No, that's not a question.

H: I'll clarify: tell us what you know about cases that are not protected by the defence of fair comment.

R: Well – that's very large – we could start with the extreme cases where it's very clear – one where it's very clear, for example, is someone who has a military power and who orders a genocide – who orders his soldiers to commit such an act – that's an extreme of a communication that's not allowed, not permitted, not protected – we could descend from this extreme towards someone who encourages and facilitates in a concrete fashion, a physical, real violence, for example, who tries to incite towards violence. Incitement to violence is not permitted in society – I think the key word is “incite”. Now, the test for incitement, as far as I know, is quite onerous – it is a criminal matter – those are some examples, I'm not sure what examples you're looking for – another example would be to tell a lie about someone which is known to be false – to tell it as a truth – and it's something that really damages the reputation of a person – for example, if a politician affirms a lie that another politician consumed illegal drugs when there was no basis for this – not saying it as an opinion but as a fact – a falsehood – a lie that causes damage is not allowed – there's no defence for that – but there's an important difference between stating a falsehood and stating an opinion based on facts. I hope I've sufficiently responded to your question?

H: You have. So you do discern the difference between a communication that is defamatory and one that is not?

R: Your question implies that I did not discern or that I have hidden that I have not discerned – but I indicate that I understand the spectrum of communication and that I try to communicate using a form that creates debate, creates uneasiness, that is provocative – so I hope that – I understand from your question that the Employer is relieved right now – I don't know.

H: Let's put it this way – we spoke yesterday about your various blogs – for example, regarding Marc Jolicoeur and the LSUC, calling President Rock a douchebag, etc. – if you are reinstated, will you feel comfortable posting blogs of that ilk, and blogs such as exhibit 121 “Symbiosis of Anarchy” – do you plan on changing your approach at all? That's the essence of my question.

R: So, it was a long question with three parts – let me think – would I republish the same blogs? Is that the question?

H: Yes, of the nature that we talked about – I don't think it's a complicated question – is your intention to continue in the same vein?

R: Ok, “Symbiosis of Anarchy and Hierarchy” is an article that followed participation in a conference – I don't think this concerns the Employer – it's a communication following a conference and criticisms that were made in all directions – yes, I think I would have

written this article – it was a reaction to a discussion that happened at a conference – maybe I will have the same the reaction at a conference in the future – I would say yes – if the Employer told me “listen, Professor Rancourt, even if this is on a blog it’s possible that students will see it and it could be a problem” – if the Employer brought this up, I would be open to the Employer wanting to block certain students who might be of an emotional fragility – I would be open to such actions by the Employer. This was written after my dismissal, but if I could have attended this conference as a professor I may have had the same reaction and may have written the same thing, yes. Obviously, my personality and my choices of communication evolve over time – I think that, because of this evolution, in the future if I had the occasion to write the “douchebag” article, I would put more time into it and write it in a way – because the goal was to lower the barrier and encourage people to criticize the president – and another goal was to do an academic criticism and propose it to my colleagues – to say that we the professors should be able to analyze the president’s behaviour and decide if it needs to be criticized. I think these kinds of criticisms are completely legitimate and good for the institution – so I might have done it in another way – using the same facts and making the criticisms in a way that would reach my colleagues – but since I made this criticism while outside of the university, I wrote it in a way to reach the university community in the broad sense. Perhaps if I was a professor I would use different media – student newspapers, etc. – and the form would be different in different forums. I hope this responds to your question. But, if your question is: “would I continue to make criticisms based on the facts I’m able to obtain?” – I think that is part of the responsibility of a professor: to criticize his institution with the goal of improving the institution. I think that a criticism that is made in such a way that we can hardly see it is a criticism – that is a personal choice. I think there is a place for professors such as myself who choose to be more direct, more provocative. I think the university must accommodate professors who choose to do things in this more direct way. I’ve always participated in the collegial governance of my university – for example, I was a member of the Departmental Council, which is the body that makes decisions affecting professors and students in the department – and I participated in a positive way in order to improve programs, coordinate programs, etc. Additionally, I was a member of a number of committees which are listed in my CV – selection committees for physics professors, planning committees of all kinds in the department, security committees for the laboratory – I’ve always participated in a positive way, and I predict that that would continue – I would have the opportunity in the future to consider to criticize, because I consider that part of my research is a study of the institution itself, and I have the academic freedom to choose – entirely – the subjects of my research. I believe that my direct criticisms have caused positive changes to the university in the past. There is evidence of that, and therefore I have the belief that criticism leads to positive changes – even if it comes in a form that is not appreciated by those who are more preoccupied by form than content.

H: I just want to explore something that you said right at the outset of your answer, perhaps 20 minutes ago – you said that exhibit 121 – if you need a break we can take our morning break.

A: Ok. 15 minutes.

*(Morning break at 10:50)*

*(Resume at 11:15)*

R: If the Employer has concerns – I prefer a more informal process where the Employer consults me and we discuss – we clarify things – I would prefer taking this approach – I do not contend that the Employer does not have a right to watch over and look after its interests – I do say that the Employer does not have a right to control research as a general rule.

H: Dr. Rancourt, on numerous occasions this morning you've referenced the responsibility of the Employer to speak to you about your blogs – do you absolve yourself of any responsibility as a teacher of students, to exhibit good judgement about your activity?

R: No.

H: So it's not just the Employer's responsibility...

A: I understand the question to be – you have responsibility in relation to the content of your blogs?

R: Yes, I consider that I'm responsible for my blogs – I'm responsible for what I write – for me this is an obvious fact. Excuse me, it was a long question with two questions one following the other – could you specify? Could you restate the question?

H: The question was simply, as a teacher of students, do you absolve yourself of personal responsibility regarding communications you place on a blog?

R: I've already provided my position about my responsibility this morning in great detail – (...) – I reject this supposition that underlies your question.

H: And if I understand – one of your answers – in terms of “writing irresponsibly” – this would mean writing something that encourages or condones violent acts? Am I right about this?

R: No it's not “condone” or “encourage” – the keyword was “incite” – so, “condone” – all of this is subject to your interpretation – you can read an article and say “I'm certain following your question that you wrote ‘Symbiosis of Anarchy and Hierarchy’ and this is something that condones violence” – I say, this is a provocative article that discusses a theoretical point following a conference and which uses a language intended to pierce through – to cause people to reconsider opinions with which I do not agree – so, you can play around with this practice of saying “you interpret this in such and such a way”, whereas I believe that students have a great discernment, are very sophisticated in their treatment with the internet –

you can say they are high school students, but I say they are adults, and I want to treat students as adults and expose them to as many opinions as possible – I don't want to bar them from any opinions – you have a perspective of protectionism and censorship and I have a vision of openness and the liberty for someone to develop given all the information – but please don't go looking for me to say that I support violence, because it's false – and I've criticized very sharply those positions that encourage negativity and destruction.

H: Do you recall a firebombing of a Royal Bank branch on May 18, 2010? It just happened to be adjacent to our offices so I'm well aware of its location.

R: It was something that was covered widely in the media and I blogged about it.

H: We're going to put on screen the particulars of the pre-dismissal/post-dismissal conduct – one of the cases where the material still remains – if there's no objection that the document will be marked as an Exhibit but only the content is what is proved and identified.

R: I didn't understand that.

H: You'll see on screen an excerpt...

A: Is that the document which I have a copy of?

D: Yes it's called "Particulars of Post-Dismissal Conduct".

R: Is it not the same document as the opening remarks?

H: It was a document referenced in the opening remarks and handed out.

R: But this document on the screen is the same as the opening remarks document.

A: My understanding is that you are directing the witness to that specific text – Wednesday, May 19, 2010?

H: We pasted this from his blog, it's no longer there – ask him to confirm it's something he put on his blog at this date.

A: That's the only purpose for this document?

H: For the time being, yes. My assistant says that if there's any concern, we can paste this and create a separate document. Hope this wouldn't hold us up.

A: As far as I'm concerned, it really doesn't matter – this document was given to me initially – we can refer to excerpts from other documents – I'm going to give it a

number with understanding that the only portion that is before me is the portion starting at pg. 6 and ending at pg. 7 – everything in bold characters – is that right?

H: That's correct.

*(Loads document)*

A: The document is labelled Ex 130 – but the only pertinent part is on pgs. 6 and 7, in bold type.

R: Can I verify the last few sentences? Thank you.

H: Can you please confirm this was posting on your blog day following bombing?

R: I don't remember the day but it was on my blog – it was part of my blog – written in relation to those events.

A: It was on your blog, but you don't remember the day?

R: One of the days following – it was a reaction to what was reported, written by me.

H: You'll see that the blog is dated May 19, refers to a video which shows the May 18 firebombing – does that help you with the date?

R: Yes, thank you.

H: Would it be accurate to say that you really relish notoriety?

R: No, I don't think it's a good characterization of me.

H: You wouldn't agree that you go out of your way to attract attention to yourself, including public attention?

R: No, that's not my goal.

H: You've identified yourself as a provocateur – isn't that technique to attract public attention?

R: I never said "provocateur" but I said that my writings are intended to provoke – I didn't use the word "provocateur".

A: Am I right to say that you don't consider yourself a provocateur?

R: I write in order to provoke, but I never used the word "provocateur" – I constantly have to specify things like that with Mr. Harnden.



H: Now, you've confirmed that you posted this material on your blog on May 19 – did you remove it?

R: No, to my knowledge I haven't removed it.

H: Have you had a chance to refresh your memory as to the contents of this article?

R: I've read what's on the screen. I remember this content but I don't remember if this is the whole blog – perhaps you have made a selection, I'm not sure.

H: We understand that – you can make your own investigations in that regard. Now, you refer to this “remarkable video” – what was the video you were commenting on?

R: I think it was the video reported by the media.

H: What did the video depict?

R: To my memory, it showed the criminal incident where people set fire to the bank – those responsible filmed it themselves and put it on the internet. The media also took that video and put it on their websites. I think it was this video.

H: And then you say “this is the first political terrorism in the City of Ottawa in the memory of its citizens”.

R: Yes, to my memory.

H: Is it the case that you wanted to attach your name to this event, and this is why you posted the material on your blog?

R: No, absolutely not.

H: Then further down you make these observations – “how does social change occur?” – then you say “one of the most interesting aspects of this action is the blogger backlash against the terrorist group – it shows a resistance to this direct action group” – and you're referring to the action of the individuals who did the bombing, right?

R: Yes.

H: And then you say “another outcome is that this action shows how easy it is to physically resist”.

R: Yes.

H: Why say that comment – who are you messaging there, Dr. Rancourt?

M: One question at a time.

H: We can go with one at a time – why that comment?

R: The word “resist” in this milieu means this kind of thing – this kind of action. It’s in order to say exactly what it means – to say “if people want to set fire to a bank, it suffices to set fire to the bank” – it’s not something that’s easy to stop – there’s always an ‘explosive’ potential, if you like – I remarked on it, I made a social commentary – we’re not in a state of chaos because people have no interest in doing that. The comment is followed by the next sentence, which explains the first.

H: On that point I agree with you sir: the next sentence says “it shows that arson is a simple yet devastatingly direct form of action against powerful hierarchical structures”.

R: Yes. So I put myself in the mind of the person who did that and I reflect his reasoning.

H: Did you not think that statement would be viewed by some readers as a compliment for the action taken by these individuals?

R: Yes, that’s exactly – yes – in a certain sense, it’s a compliment – in a certain sense – I agree – not agree – I’m looking for the word – I acknowledge that a person might be happy that their simple actions can cause damage – so yes, in that way, it could be a compliment. In other words, the goal of the blog is not to say, to participate in the majority movement that says “oh my god it’s horrible, we must denounce this horrible act” – this is the mass reaction and the reaction of the upper class, etc. – I play the contrary role, I take on the contrary role and speak to how the person himself sees it – I bring out the other point of view – I admit this is very provocative, but it encourages discussion about why people do this, what they see in it, etc.

H: Dr. Rancourt, show us in the wording where you convey to the reader that you’re talking about a certain point of view and not another? We must be missing something – I must be missing something.

R: I think the way the reader knows this is because it’s published in a blog in which the blog in its entirety is about that – the blog is about making counter-current and provocative comments. So the context is the blog, and the readers of the blog are very aware of this.

H: How do you know that?

R: No one can know this with certainty – I’m giving the best answer I can.

H: Sir, given, as you say, that no one can know these things with certainty, do you not have any concern about students reading this statement, by someone who aspires to be a professor – does that not concern you at all?

R: Can I see the text below? I think that students are sophisticated adults and can read this – it's different from YouTube music videos – students realize the context, in my opinion – I have good reason to believe this opinion because I receive a lot of feedback – discussions, etc. – I see how people react and say the opposite of what's stated in this blog – I have no reason to believe in a sinister power of written words on the minds of young students, as you describe – I've been at the university for several decades and I have difficulty accepting this notion. On the other hand, I believe this type of article brings out contrary or similar opinions in students – but it brings out opinions and creates discussion – the blog catalyzes exactly this kind of discussion – so I reject your notion of danger to society – but, I'm open to someone explaining to me rationally the mechanism of such a danger, other than the impressions you project onto me – I'm very open to a social sciences researcher tells me that, following research a certain word causes a certain damage – in my experience it's not like this but I'm open to adjusting my understanding in accordance with the information available – it's a discourse, dialogue. It's true that, when I look at my self-image, I consider that I have a role to play – to offer a point of view that's against the grain – I believe that my role in doing this is useful in society and is fruitful.

H: My question was “did you have any concern about students reading this material” I'm inferring from your answer that you don't, but here's your chance, if you say otherwise.

R: I'll put myself back in the moment – one of the things that shocked me about how the media treated this was that they used the word “Anarchist” and related it to terrorism.

A: They used the word?

R: Anarchism, Anarchist.

A: And associated it to?

R: Terrorism. This shocked me, and I think my last sentence in the blog was a “push-back” – I think I was frustrated – I admit I wrote those words in frustration, and it was perhaps not the best choice -- perhaps it resulted more from frustration than from rational thought – after this, I took that rationality and called the media and explained to them this was not correct and unjust – then I was interviewed by Radio-Canada – no it was CBC – I was interviewed by them and they misquoted me – so I was even more frustrated (*laughs*) – so I contacted one of the senior journalists in Ottawa – he told me he was very concerned, that there had been an error, and he wanted to correct it – I had the chance to express my opinion about the choice of photo of the suspects which I found that they had chosen photos without accusations

against them – and they chose very negative photos which showed them in a bad light – and the journalists agreed with me and they changed the photo – CBC stopped doing the kind of reporting they had participated in – so my reaction was fruitful because I contacted the media and had an influence – but I admit there are certain parts of this blog that are more the result of frustration than reason – and I want the blog to be truthful and reflect the process of authentic interaction – so I left the blog like that – I leave it there as an error that has been done, which can be criticized – in general when I make a mistake like that – when I write a blog rapidly – there are comments there, people have already invested in it – it’s unjust towards those participants and I prefer to just leave it there and admit that I’ve made an error. It’s an error in the sense that it reflects my frustration, not in the sense that it gives negative effects other than that.

A: But it’s not an error in the sense...?

R: It doesn’t give tangible results that cause me to want to remove those words. I think that reacting, getting upset, sometimes that’s part of communication, and I leave it as is. And you’re right that it was one day later, and perhaps I didn’t give it – it was a reaction, this article – it was very short, and it was a reaction.

H: Let’s pursue what you now acknowledge to be an error – is the statement in the 2<sup>nd</sup> last paragraph “let’s see if the police state apparatus in Canada will catch these brave daredevils” – is that part of your error?

R: I wouldn’t say it’s an error – I would say that it’s a reaction motivated by (...)

A: And the question was “is that statement...”

H: Part of what you would call a mistake.

R: No – when I spoke about errors, I explained it was a reaction vs. a deep rational analysis – that’s what I meant by error – and this second last sentence – I was reacting to the following thing: I saw an event in the media that was very important – an act of terrorism in the City of Ottawa – and I saw the media reaction, including interviews with police, etc., and I saw that it was completely as if they had found the culprits and determined that they were guilty beforehand – in the choice of words, choice of photos, the way they interviewed police, the statements of the police spokespeople – I believed it falsified justice and prevented a sociological analysis of the phenomenon – so this was more or less my reaction – the police had already decided who was guilty and etc. – so when I said “we’ll see if they do their work”, it was a reaction – I was angry.

H: You acknowledge that you posted this as a mistake or an error, but you didn’t want to correct it because you were concerned about the interests of people who read your blog?

R: It's part of what I said – you're asking me to repeat, is that necessary?

A: Were you worried about the integrity of the process?

R: Yes – even an error can be useful – this error gave rise to a lot of discussion – I don't have the habit of changing my language because it was more of a reaction than an analysis – I preserve my reaction, which comes from an emotion, as much as my rational analysis – it's a record of my communication, that's all. I mean, if the authorities approached me and said "look, Mr. Rancourt, what you've blogged is a problem because the young are going to start doing such things" – I would have had a discussion with them – I would have asked them to explain how they make the link between a blog of this type and an incident or a causal effect – I would have asked them to explain this, and if they brought up a point that I considered to be just, I would have changed my blog. But in all my experience, in all my reading, such a causal effect does not exist – I think in the sociological sense, it's untenable to believe that there's such a link – that blogs, writings, are the cause of such actions in society – I believe that is untenable and that it's the opposite – all that expression of ideas allows a development of opinions and conflict between different opinions – it allows for personal development – this is not my personal theory – all the great thinkers who I have read on freedom of expression believe that the more we can freely express ourselves, the better off we are as a society – this doesn't come from me – this is well-established, I believe, and I firmly believe in it. Yes it's true that I am very critical towards the police, for example – I've had the opportunity to challenge the Chief of Police of Ottawa face-to-face at a conference – he's now a Senator – is it Herb White, former Chief of Police? I don't remember – I told him there was file that mistreated and should not at all have been treated in that way – and he responded about how he handled it – after the conference, during the cocktail hour I approached him and said "you didn't admit it was an error" and he said "yes, I made an error and should not have handled the file in that way – but, in all the things I had to do, I handled it that way – but yes, it was an error" and this was observed by witnesses. I take my critical role towards the police very seriously, and the way they treat students – for example, a few years ago there was a summit in Quebec and police made pre-emptive arrests in Ottawa – and I took a very critical role and said these were police state tactics – and this was in the media and gave rise to a debate about police state tactics – so yes I am very critical and sometimes I get heated up when I write my blog articles, but it's in a context that people can recognize on the blog. Vern White was the name of the Police Chief who's now a Senator.

H: Thank you for that anecdote about how Senator White acknowledged his error. Just to make sure – does this blog remain on one of your blogs today?

R: Yes, on the Activist Teacher blog, I believe.

H: And you told us about how you weighed the people who commented on the blog – what weight did you give to the concern that students reading the blog would conclude that you, Denis Rancourt, endorsed the actions of these individuals?

R: I have an analysis, I have an opinion about how things that are read can be understood – in my opinion, students who read this may say “Oh boy – whoever wrote this blog agrees with this kind of action, but I’m not so I’ll move on to something else” – I admit that that’s a possible reaction – there are many possible reactions – and I’m prepared to admit that there are many possible misinterpretations – I don’t deny any of this – but I’m saying that a variety of personal interpretations and the mix of communications that results is a positive thing, and I want to encourage that. Regarding the comments that were posted on this article – sometimes people put comments on one blog article, then on another, or put the comments on the wrong article – but I think these exchanges had a value and I left them there – I never considered removing my words, I never removed this article and never considered doing so because, in my opinion, all this reaction, all this emotion, is positive – we need that in society. So, even if I admit that it was a reaction more than an analysis, that does not mean it was useless.

H: Now, the witness has referred to interviews with news media, and I’d like to move further down in the document and have as part of our record an excerpt from a newspaper article which speaks to this subject matter – it begins “the former professor has said that two of the accused men were students in his Science in Society course”. I’d like the witness to confirm this was what was reported at the time?

A: The question is “does he agree”?

H: Can you confirm, Dr. Rancourt?

R: First of all, I just want to say I’d like read the entire article before commenting. It’s been a few years and it would be better to read the entire article. If you have it, I’d appreciate it.

H: We’ll get it and give it to you after lunch.

A: Let’s break now. I understand that when we reconvene, you’ll have a copy of the full article.

*(Lunch break)*

*(Resume at 1:43)*

H: We’re going to begin by returning to the blog posting that had been excerpted in the particulars – given that the witness explained that the document was still posted, we thought it proper to give him the complete blog posting – there was an additional paragraph – we thought we’d give him the benefit of seeing it. Now in terms of the exhibit, the particular document – we’ll be referring to it – I wonder if we should make this an exhibit.

A: So, 131 would be the full article on the blog of what we have identified so far as Ex. 130.

H: That's correct, including the comments.

A: That would be...

D: It's entitled "Political Terrorism against Banking..."

A: OK, this will now become Ex. 131.

H: This will be the document that will be best for the purposes of the questions. Dr. Rancourt, we've dealt with this at some length this morning, but now that you see the full content of the blog, if you have anything you'd like to add you may do so.

R: Thank you – yes, it's useful to have the full copy, because in your selection you have chosen to exclude the last paragraph, which in my opinion is very important – the last paragraph is the conclusion, from what I can see, and it says "all societal responses are possible: 1) more police; 2) address the underlying causes of injustice that give rise to such actions – so addressing the causes – I think this shows that despite my reaction, which I described this morning, at the end of the blog I managed to explain my rational motivation for writing this blog – posing this fundamental question – I would appreciate very much in the future having full copies of articles, if possible.

H: Does that complete your comments?

R: Mm-hmm.

H: You had referenced before this morning your concern about people who might have commented on your blog – we see below two people who commented – were these the people who you were concerned about removing their comments?

R: I don't have a precise memory of who commented, it was a general concern that I do not want to remove comments that have been made – it's part of a conversation – this kind of comment, yes I made reference to them – I also said that it's possible there are more comments attached to other blogs that touch on these questions. I already explained this morning but I repeat to aid your memory.

H: Thank you – so there's nothing specific about these two individuals, who I notice are both anonymous, related to your concern?

R: When I made my comments this morning I had no memory of what comments had been made.

H: Turn to another article (*hands paper copy to witness*) – we now have a copy of the article on the screen.

R: You want me to read this? You have questions about the text.

H: Yes, and you may read through it.

D: This is “Ottawa RBC Firebombing...”

R: I don’t remember this photo (*points to picture on article*).

H: Can you confirm that you recall the article? You’re quoted in this article.

R: OK, I’ll read it, but I’ll say first of all that I don’t remember this photograph.

M: Can I ask, because the witness can’t identify it – where is this from? It’s not from a newspaper article?

H: CBC News – it would have been an online article. And, uh, if you recall this morning, I was gonna to put an excerpt to him and he said “I’d like to see the full article” – so that’s why we’re including the full article. The excerpt is on pg. 2 under the heading “Accused took activism course at U of O”.

R: OK, so that entire section?

H: Yes, but you’d ask to have the benefit of the full article...

R: Yes, thank you. OK, I’ve read it.

H: First of all, you told us this morning that you took it upon yourself to contact media outlets because you wanted to talk to them about the media coverage of the bombing – was CBC one of the outlets you contacted?

R: I believe so. It was in order to criticize their coverage, but I don’t remember if it was CBC or someone else, I don’t remember how exactly I contacted them – I can’t really confirm from memory – whether I contacted CBC or some other media – but, following this article that’s before us, which has serious errors concerning me, I contacted a senior journalist and complained about how I was covered, as well as the general coverage.

A: You complained about an inaccuracy...?

R: Yes I complained about the coverage concerning me and the general coverage of the event in question. This is something I explained this morning.

H: From the article, you volunteered to CBC that 2 of the accused men were students in one of your courses?

R: No, that’s an error.



H: I see – well tell us where there’s an error. Under heading “2 of accused took activism course at U of O”.

R: OK – one of the people I don’t know at all, it’s Roger Clement who’s mentioned here. Another person is Matthew Morgan Brown – he wasn’t in my courses, I knew who he was vaguely, but I had not had interactions with him – the third person, Mr. Claude Haridge, was 50-year old engineer, and he was a regular participant in the 2006 course and in Cinema Politica, which I organized. The Science and Society course, and the weekly film night Cinema Politica. I knew Mr. Haridge well and often discussed with him. One of the things that I said to the journalist was that it was impossible in my mind that Mr. Haridge could have been involved in this thing. And finally, there was no charge against him in this affair. I complained as well about the manner in which the media showed Mr. Haridge – they chose unflattering photos and they changed the photos after my complaint. I complained as well about the fact that, when they interviewed me – in fact, I’m not sure that this was a written article – it might have been a TV interview – but I know the general statements of this article – in the article they cite me as saying “‘We weren’t learning how to make bombs’, Rancourt said” – and I was very angry about that because during the interview, I remember the setting of the interview – it was an oral interview with a microphone, not written, and it was in front of my house – the way the interview was conducted reproduced exactly the criticism I had of the general media coverage – I was frustrated, and I said to the journalist – she was a woman, her name is not here – I said, listen “off the record – you’re trying to make a link between my course and this event – I said ‘look we didn’t learn how to make bombs’” – and this thing that I said ‘off the record’ ended up in the article – I contacted the senior journalist and asked how such a thing could happen – the senior journalist agreed, apologized, and it was at this time that I had a more in-depth conversation with the journalist about Mr. Haridge, etc. – another falsehood in the article is the statement ‘the accused Morgan-Brown may have been one of Rancourt’s students because Rancourt was present at a protest against Morgan-Brown’s arrest at a summit at Montebello’ – and this was a link invented by a journalist because I didn’t know Morgan-Brown was one of the people arrested, I might not have even known who he was – because I went to the police station to protest the pre-emptive arrest of young people – I protested that, I spoke to the media, I said these were police state tactics – at this time I did not know who was arrested – the link is false – it said ‘Rancourt was outside demanding to know why he was arrested’ – it’s false, because I didn’t know who these people were who were arrested – I was protesting and asking why these young people were being arrested pre-emptively – that’s why I was there – so this media article is false on many points, and that’s why I called the journalist to complain, among other things. I don’t remember seeing this written article, I remember of something that was televised, I believe. Also, the name of the journalist does not appear on this document. A correction regarding Mr. Haridge is indicated here as well, at the bottom of the page.

H: Is the correction correct? Was Mr. Haridge only charged with careless storage of ammunition and mischief?

R: I have no idea – I wasn't at the origin of the correction – I was vigilant, I encouraged them to get things right, but I did not have information about that subject.

H: What about the quotation 3 paragraphs below the heading “2 of the accused took course at U of O” beginning “the ex-professor Denis Rancourt”?

M: I don't see how this could be relevant – it's not about one of the courses at issue.

H: That's fine, I'll withdraw the question. We'll turn to one more article on this subject matter (*hands article to witness*).

R: Was the last article entered as an exhibit?

A: Yes, it was 132. What is the document you're referring to.

D: It's entitled “Globe and Mail, June 25, 2010”.

H: I'll give you a chance to review it, Dr. Rancourt, just tell us when you've done so.

R: Thank you.

H: First of all I'd like you to refer to the 1<sup>st</sup> page – the 3<sup>rd</sup> paragraph from the bottom, where it says – “‘he's definitely an influence of mine’, says Marc Kelly, one of a multitude of students who've travelled to G-20 in Toronto”.

R: I don't have an opinion on that – well, my opinion is that I interact with people while they are in my courses – I propose reading – I don't know any young people who I could say I have influenced other than professor-student discussions, etc. – I believe that a person has multiple influences in his life, and that includes many people, and that the strongest influences are with the closest people to them, not with professors – I believe that my existence has an influence on the people I know and the people who will read what I write, but not more than anyone else – I'm not sure where you want to go with that question, but I hope I have answered?

H: So, Dr. Rancourt, you don't perceive yourself, as a professor teaching students, that you don't have an influence on students, is that what you're trying to convince us of?

R: No, I'm not trying to convince you of anything, I'm giving you my opinion – I try to create an environment propitious to discussion, to allow debate, to interact – that's the process – that's all.

H: You would agree with me, Dr. Rancourt, that if these comments attributing to Marc Kelly are true, he's attributing to you a significant impact on his life he says "he de-brainwashed me".

R: Yes, if these words are reported in a precise way, then I would agree that he believes that my words have a great influence on him.

H: Mr. Kelly's here today right?

R: I don't see him.

H: He was here?

R: I recognized him earlier.

H: We'll return to Mr. Kelly later. Over on the next page "at the same time he sees an upside to some of the firebombing fallout" – those aren't your words, that's the journalist – he then quotes you as saying "I'm not applauding it – I do believe banks deserve criticism – the bombing directly shines a light on this – much good can come from this, I believe".

A: Excuse me, I'm just trying to find the place.

R: So, my response was – it's something that, in general, I might say, but I can't precisely remember saying those words.

H: Is there anything in that statement attributed to you in public media that causes you any concern?

R: You mean the last sentence?

H: Yes, in terms of you being a professor who might be called on to teach students again?

R: I think in the context, people know what I mean.

H: What do you think people knew? What do you think people took from your comment "much good comes from this action".

R: I think if I would have said this it would have been in the context of this entire paragraph, and that means that this event brings significant media coverage onto the banks and attention to that – it shows that people see banks as being nasty, and brings attention to that – can bring about debate, etc. I mean, when I make a comment like this, it's in a large context – for example, I make a criticism of what we call "fractional reserve banking" – I think it's a structural problem, the way banks create money – so I am a critic of the financial system, the legality of it, and I think there are questions to be asked about that – it's in this broader context that I make

these criticisms. Another thing – I know who Marc Kelly is, but I also know who Sabrina Bowman is, who is now a professional – I had the occasion of seeing her recently – and she says “Denis Rancourt has his beliefs, some that I disagree with, but never, ever, did he advocate violence – it’s an interesting connection but I would disagree with it 100%”.

H: And what does Mr. Kelly say at the end of the paragraph “suddenly I have to justify to my parents I’m not a bomber – who says he thinks it was magnificent – I would never carry out such a thing myself but it was a work of art – no one was hurt”. Does it bother you that someone you taught said this?

M: Does this witness have knowledge of these statements?

R: I don’t have knowledge that Mr. Kelly said these things.

H: And what knowledge did you have that Ms. Bowman said these things?

R: None, I’m only reading what is there.

H: I was going to leave it there, but you wanted the Arbitrator to have regard to Ms. Bowman’s comments and not Mr. Kelly’s comments.

M: No, it was the lawyer who said that. Sometimes we get the grievor mixed up with the lawyer. But I have some comments about this article, if it’s going to be marked as an exhibit – this is an article where we’re asking Mr. Rancourt “what do you think about this” – it’s not about the truth of the statement, it’s about a statement about which Prof. Rancourt has no knowledge. To the extent that my friend has said “you’re quoted as saying this, did you say it?” – I think as having the written version, it’s not a problem – I ask that as we mark it, it have only that purpose and no other purpose.

H: I’m content with that.

A: The document is legally put into evidence regarding what is written and what you recognize having said in the interview and what you recognize in the content, but not concerning the content including the statements by both these people – these other comments are not in evidence because you do not recognize having heard these statements and they’re the comments of other people.

R: Are the journalist’s words in evidence?

A: To the extent that you made comments about it – e.g. you referred to the fact that the journalist said such and such. The words you’ve said, I’ve taken as evidence – regarding what other non-witnesses say – the document 133 is in evidence in regards to what the witness has recognized as what he said or did not say as opposed to – the comments of Ms. Bowman or Mr. Kelly are not in evidence.

H: Dr. Rancourt, going back to when you were a professor at the UofO, did you have ongoing email exchanges with your students?

R: I don't know what you mean by ongoing, but yes it's the norm between professors and students.

H: You maintained two email accounts – 1) your university account, and 2) your Gmail account?

R: I no longer have my university account – my work account, and today I have a Gmail account.

H: I'm talking about the time period when you were still employed by the UofO – did you at that time have a university email account and a Gmail account?

R: Not during the whole period, but during one or more years I had the two accounts – the same Gmail account I still have now. I think that a student in physics recommended Gmail to me and explained the advantages – I tried it and I kept that account.

H: And did you exchange some messages with students on your university account and some on your Gmail account?

R: I tried to have the most communication that had to do with the university on the university account – I tried to separate this – but sometimes I invited graduate students to an evening at my place, I did it from my account at home – so this created some overlap. But, as much as possible, in all my exchanges regarding courses and for research projects, it was always done with my university account. The email that I gave in my courses, at the beginning of the class, was my university email.

H: Now are the exchanges you had with students on your Gmail account, are they available today? I'm talking about the time when you were employed at the university?

R: Well – in general when I receive an email, if it is no longer useful I will delete it in order not to build up too many emails – or maybe not, it depends, it's a question of managing emails.

H: In the course of preparing for this hearing, did you go through your Gmail account and produce, for your counsel all Gmail exchanges which were relevant to this matter?

R: Yes.

H: And did that search include the subject matters that were referenced in the "Particulars of the Post-Dismissal Conduct" such as the RBC bombing that we just talked about?

R: Yes, I think so, because I recognized things there that might have been in my account.

H: You hesitated – are you sure you’ve done that search?

R: Yes.

H: Well, I’m curious because there’s virtually no production of your Gmail account – perhaps not the only, but one of the rare circumstances where we have a copy of an email exchange between yourself and one of your students is when that student sent it to the university. I’ll put it on the screen, it’s the entire email – no additional context required. You see it on the screen?

R: Yes, I remember seeing that in your documents.

H: Can you confirm that you sent that email on that occasion.

R: I would like to see the entire email.

H: It’s on the screen – you see “DGR” aren’t those your initials?

R: It’s missing the names, who it was sent to, the addresses, there might be attachments – I’d like to see the whole thing.

H: Why don’t we take a break and we’ll see if we can find it. Mr. McGee, we consciously deleted the name (it says “name deleted”) – we can show that if the Arbitrator does not have any objection. Just so you understand, we consciously did that for that reason.

M: Fair enough, I understand.

R: Can you leave the document on the screen so that I may read it?

M: If there’s a particular reason for avoiding any names, we can work something out. I’m not sure if your worry is that it may be read aloud?

H: No, it’s just a general concern, I know the Arbitrator is sensitive to that.

A: I’m sensitive to that, but maybe we could use it in a way such that the name of the student does not appear in evidence, but that the whole document could be shown to the witness so that he can read it.

*(Break, resume at 3:10)*

A: I have a keyboard for my iPad, but I forgot it and just spent 15 minutes writing an email with my finger – I’m from the old generation.

M: Well, as we were doing the exchange over the weekend, my wife was driving back from Toronto and my only internet connection was my iPhone and I was typing on that, so I have no small amount of sympathy for you.

A: So, we're talking about the document 134 – will this be entered into evidence, or is it just to show the witness the document in full?

H: I'm content to put it into evidence.

M: To be clear, this is not being put in as evidence of conduct of Prof. Rancourt – we had a discussion about whether this was post-discharge conduct.

H: That should be emphasized – the email exchange in question is not relied upon by the university as a ground of dismissal. I'm not far away from telling you why I'm pursuing this. Dr. Rancourt, have you put yourself in a position where you can confirm you sent the email of July 13 to the student.

R: There's something that concerns me very much about the document that you have given me, and I would like to explain this – can we put exhibit 130 on the screen?

H: Perhaps you could tell us your concern?

R: I would like to use exhibit 130 if you could put it on the screen, please? Or if you could lend me a paper copy if that's easier?

H: Unless there's some issue with the accuracy of the email – the only purpose was to show you the full email...

R: I would very much appreciate it if you could put exhibit 130 on the screen – it would really help me. Thank you for putting it on the screen – is this exhibit 130? Can we go to the place where this email is referred to, please? Thank you – please let me see what is above the email – is that possible? Thank you – so I read in the sentence above “a copy of the following email from Dr. Rancourt to one of the university's students was forwarded to the university following Dr. Rancourt's dismissal”

H: Yes, this is an error that has been acknowledged.

R: It's been one year, and you've never signalled to the arbitrator that this was an error.

A: I'm at page 148 in my notes, so I don't really know where I would have noted it.

R: It's very simple – this document was given on the first day – this falsehood was identified more than a year ago, the university wanted to pretend it was sent to them after I was dismissed – they never corrected this.

A: You can talk to your lawyer – if there is a modification to be made, you can talk to your lawyer.

R: I'm currently making a complaint about the university's behaviour.

A: I don't really understand – you have to talk to your lawyer about the process – the fact that what is written here – there could have been an error...

R: I've made my complaint, I think it was fair.

H: I've asked you to confirm – did you send this email to the student on the date indicated?

R: I've looked at it and it's a document of the university – it's an email that goes from Allan Rock to Andre Dumulon.

H: I'm referring to your email – if you want to refer to other material, that's fine. Let's me run the sequence of things. You see the email July 13, 2008 – did you send this?

R: Yes, it's indeed possible that I sent this email.

A: Which email are we referring to?

H: The email at the bottom of the page on exhibit 134 – the witness wanted the full document to be included here.

A: So it's what's at the bottom of pg. 2.

R: If I can help, it's a document sent on July 13, 2008 – I can't confirm the date and time, of course, but I can confirm that I would have sent such an email. And I see in the document that this email was attached at the bottom of another email which comes from a student – and these 2 emails were sent by Mona Nemer to Allan Rock, Nathalie Des Rosiers, Victor Simon, where this person says on Feb. 20, 2009 that she is very concerned – she says, "colleagues, I don't know about you, but I find this email very disturbing – is any action being considered? Am I wrong in reading in it death threats?" – this was sent from Allan Rock to Andree Dumulon in Feb, 2009 – so before I was fired – "maybe Rancourt should add this to his 'brief' on Monday demonstrating the political context for his firing, or maybe we should" – and just to add, from my memory, this document was never submitted by the university in one way or another to be considered in my dismissal, and evidently many people involved in my firing saw this email, without my being aware of that.



A: The question has to do with the email from July 13, 2008.

H: That's correct – would you say that the content of this email is atypical or representative of the type of exchanges in your Gmail account that you had with students during that period?

R: There was a great variety of exchanges on my personal account, for social gatherings, etc. – I can't say what was in that range of emails, but I can say it was probably the only time I suggested that the group Immortal Technique be invited to Ottawa.

H: I'm referring to the tone – might we call it “informal” – an attempt to engage, quite frankly, in a juvenile way with your students – is this an atypical email, or typical of the types of emails with your students?

R: I'm not sure if Mr. Stojanovic was a student of mine at the time this email was sent – he was a student at one time – I co-supervised his master's thesis at one time – he was in one of my courses, I think – I'm not sure if he was an email at the time this was sent. Certainly this email had nothing to do with a course or with research supervision.

H: Would it be fair to say that this reflects an attempt on your part to ingratiate yourself with students at the university?

R: No, I think that's spin – I think the message means it would be a good idea, it was an opportunity to have an important social event that offered a challenge, something beyond the norm in Ottawa – an interesting cultural event – I was expressing my enthusiasm for this idea.

H: Well, given that you've asked that the full exchange be present, I want to give you an opportunity to comment on the student's response to your suggestion, and his providing you with the lyrics of the group that you were suggesting should be invited to “crash Tabaret Lawn”.

M: Objection – that's not relevant.

H: I'd like to tell you where we're going with this, I'd appreciate the witness being excluded please.

M: I don't object to that.

*(Witness leaves room)*

A: I'll ask you to repeat the question.

H: You may have noticed there was a response from the student and he quoted the lyrics from this group, the contents of which are – have violent images, among other

things – in November of 2008, following this email exchange we’re talking about – there was the closure of Dr. Rancourt’s lab that is the subject of a bad faith allegation by the association on behalf of Dr. Rancourt – our response to that has been – and when I say has been, we can look at the evidence of Dr. Lalonde in cross-examination, and that will be developed further – was that the university had a legitimate concern that Dr. Rancourt was capable of inciting a group of students to engage in activist activities. Among the students were students to whom he had given keys to the lab. Among those students was a student named Marc Kelly – Marc Kelly had, prior to the closure of the lab – went into a classroom with a bag over his head, played loud music, and had frightened the students, and Dr. Lalonde described it. We will ask you to conclude that the university’s concerns about what Dr. Rancourt may have been up to in terms of inciting this student were legitimate concerns such that the closure of the lab was not done in bad faith, or as a means of improper retribution, but was a legitimate attempt to protect the university and its students. There has not been produced to us any email exchanges between Dr. Rancourt and Marc Kelly so we can’t refer to those – this is the only email exchange between the grievor and a student in this time period, that just happened to come to us because the student sent it – we say we can point to content of this email to support contention that the university’s concerns about Rancourt’s communications with students were reasonable. I grant you, that’s asking you to draw an inference, but we say when you look at the content of this one email we have “let’s get in touch with that niga, let’s blow Ottawa wide open” – it’s not unreasonable to assume that there are other such exchanges, in link to that what the student quite reasonably pointed out – that this group is famous for the type of lyrics excerpted by the student, which have violent images associated with them.

M: When we started this hearing, we were told that the university had no idea that this had gone on before Prof. Rancourt was fired. Now you’re being told that not only did they have an idea that it was going on before Prof. Rancourt was fired, but that it was one of the sources for their concern about Prof. Rancourt more than a year before he was fired.

H: That’s not what I said – it couldn’t have been because it only came to light when it was sent.

M: But to say – this was the reason we closed down the lab – either it was a reason they closed down the lab, or it wasn’t – it’s not open to the university to say “if we had known about this, it would have been one of the reasons for closing down the lab, therefore closing down the lab was not done in bad faith” – it will be a position of APUO that before the termination, Allan Rock is making fun of this – that’s a question for argument at the end of the day – that’s what we will say is the best interpretation of this email where he says “maybe Rancourt should add this to his brief on Monday to show the ‘political’ context...” – he’s joking – to go from there and say it’s put in evidence to demonstrate the source of a concern that was so serious we had to try to shut down the lab and Prof. Rancourt – the timing doesn’t work, but more importantly, Mr. Rock’s email demonstrates that that’s simply not correct – Mona Nemer’s email may be one thing, but Allan Rock’s email shows exactly what we’re dealing with –

certainly there was no suggestion from Dean Lalonde that something like this entered into his thought process – there's no indication, and he was one of the people central to this decision – I would have thought that if the knowledge of these facts was to play any part, that we would have expected Dean Lalonde to have seen this at the time, or at some time after that – and therefore, asking Prof. Rancourt what he thinks today of lyrics in an email to him nearly 4 and ½ years ago is simply not material to a fact that's in issue before you.

H: I agree with that last observation – I don't need Dr. Rancourt's observations on the lyrics – I was giving him an opportunity to comment if he wanted to – I'm content to leave it as it is. It's a matter of argument, if I can succeed in having you draw the inference, and I can leave it at that.

M: Before I bring back the witness, are you content that I advise him what happened?

A: So, I understand that the document is entered at 134, but that the question to the witness is withdrawn.

H: Yes, but I'm reserving the right to argue that this gives insight into what was happening at the time and give weight to my argument that university had legitimate concerns about what was going on with Dr. Rancourt and the students.

M: My point was dealing with the email from Mr. Rock to Andree Dumulon – there is, and I don't want us to get into some difficulty, because I have not determined whether or not I will ask Prof. Rancourt a question about his email – so, if that is an issue we probably should discuss it now. My objection was to the question “you see these lyrics, what do you think about them?”.

*(McGee brings witness back in)*

H: Dr. Rancourt, just to close off on your email exchanges with students – your lab was closed on Nov. 21, 2008, if you recall.

A: What day?

H: Nov. 21, 2008.

R: No, I don't remember the date. You're referring to the “lock-out”, when you changed the locks?

H: Yes, you with your foot in the door, etc. Are you telling us that you didn't have exchanges on your Gmail account with people like Marc Kelly and others who used your lab – are you certain of that, it would have been very unusual?

R: I provided everything I had, and Marc Kelly did not have a desk in the lab.

H: Did Marc Kelly have access to the lab?

R: He didn't have a key, but he had access – I was his research supervisor at the time.

H: OK, so Marc Kelly and others who had access at the time – you've affirmed, you're telling us the truth – are you certain you had no other exchanges through your Gmail account with those students – do you want to think about that?

R: No, all exchanges about that lab were done with my university account, as far as I can remember – and yes, there were exchanges. I remember that students had all kinds of – there were consequences because we couldn't get back into the laboratory for several weeks – it was a big deal and many emails were sent between students and I, between the administration and I, etc. – and between the administration and students, to which I was in CC.

H: My last question on this – you're telling us you've searched your Gmail account and found no exchanges about the lab closure?

R: Yes.

H: Dr. Lalonde, in his cross-examination described an incident which had come to his attention – it involved Marc Kelly walking into an education class wearing a white jumper suit and a box on his head – Dr. Lalonde said he was also playing very loud, ominous music. I appreciate you weren't present, just refreshing your memory as to Dr. Lalonde's evidence. I understand this occurred on October 29, 2008 – just trying to put it in context – my question is: did this, shall we call it, event, come to your attention?

R: I knew that Marc Kelly did this kind of thing because he did it once at Cinema Politica – that was the first time I knew about it – he came into the auditorium at Cinema Politica before the event started dressed like that – I knew after, someone told me or something – and he played the music in question – and that same music I found to be very interesting, and the performance that Mr. Kelly did at Cinema Politica was very highly appreciated by the audience at Cinema Politica – eventually I asked for a copy of that music and played it on my radio show more than once, I believe. So, I don't agree with Dean Lalonde that it was frightening music or with his characterization – it was music with words which criticized the education system...

H: Do you recall the lyrics? Why don't you share that with us?

R: Not the precise words, just the general theme, which was the theme of certain harmful effects that the educational system can have on children and on students in general – this was the wide theme of the music, I'm not a connoisseur of music, but I appreciate

the quality of the music and the words, which I found were well said. I don't know if Professor Lalonde affirmed that he had heard the music, or if someone had told him about it – I don't remember his testimony, but I think that if he had heard it he would not have described it in this way – I don't know.

H: Having heard about this, did you have any concern about the actions of Marc Kelly going into a classroom like this – did you have any concern or did you celebrate it?

R: It's very common for students to do presentations in class – it could be about student politics, things that concern them – it's a common mode of communication for students – they go into class and address classes for several minutes – so it doesn't concern me at all or shock me at all. Now, if I was the professor of that class – people often came to my classes at the beginning of class – sometimes they asked me permission, sometimes they came before class started – if it took up too much time, I would signal to the students that time was running out and that was it – they would wrap it up and we'd move on to the course – it was very common to have presentations like this happen.

H: Dr. Lalonde testified that reports came to him that students in the class were frightened by this episode, frightened about their physical safety. Does that cause you any concern?

R: Yes, that concerns me if Dr. Lalonde had such reports – but if it was the same performance that I saw, I don't see how it could cause concern – I believe we have an exhibit containing this photo...

H: Yes, let's put it on the screen so we can all be reminded of it.

R: That's the costume that I saw at Cinema Politica. It's a kind of white coat used in labs in science – he's wearing a white box with a logo of the university printed on one side of the box – the person wearing the costume is holding a handle, which I believe is a music-playing machine – the music came from there – I was a witness to the reaction to the people at Cinema Politica and I can say that what I observed is that people found that amusing and funny – so yes, it's concerning if it's serious that we're talking about the same thing.

H: So, you don't share Dr. Lalonde's concern about a student in this outfit barging into a classroom, playing loud music, when the professor is in the middle of teaching students?

R: Oh, well I described what I'm familiar with – but if a student burst into a classroom in the middle of a course – yes I'd make sure to speak to the person, it would worry me – I would expect the professor to react in an appropriate fashion.

H: Do I understand correctly that the photo that was exhibit 114 was placed on your office door – is that correct?

R: Yes – I don't know if it was me, maybe – my door was full of announcements and all kinds of photocopies – it was literally full, and when someone gave me a photo I often would paste it to my door – students also posted things to my door to inform me something was happening – so I don't remember if it was me or someone else, but yes, it was on my office door in the physics building – I would like to say that this presentation by Marc Kelly, which I saw, I really appreciated it, I found it to be done with a lot of humour and I found the text of the song very intelligent and incisive – I played it on my radio show several times, and I thought that the costume was clever because it was as if someone was disguised as an institution – I found that very interesting. So personally, I found that funny and I appreciate this kind of theatre, and I think the university is a place where we can practice this kind of theatre and communicate in this way – I think the YouTube was not as popular in 2008 as later, but I think it would have made a YouTube video that would have been very interesting and appreciated by many people.

H: Are you referring to the events that took place in the classroom, or your Cinema Political event?

R: I'm referring to what I saw – the Cinema Politica performance – I don't know about the other performance, but I assume it was the same – I haven't heard otherwise.

H: I want you to identify if you could, please, this posting on your blog dated April 13, 2007 – I don't have an extra copy of it.

D: This is document UO0000184.

H: Just because I want to move this along I'll give you my only copy, but I'll have to have it back for my questions.

R: I can confirm it's an article I wrote, and as I already said, this article has been published in several books and several pedagogical journals – it's definitely an article I wrote – it's been in at least 2 books and several well-known pedagogical journals – yes, I'm the author of this article. I can read it on the screen if you like?

H: That's fine. Let's begin – at a general level the title is “Academic squatting: a democratic method of curriculum development”. Can you refresh our memory about what you mean by the term “academic squatting”?

R: It means that teachers and students work together to determine the content and form of the class.

H: In your article, you say, in reference to the Physics and environment course “this may have been the first example of overt academic squatting – where one takes an existing course and does with it something different”.

R: I just want to clarify – the 2005 course Physics and the environment is not at all before the Arbitrator – it already went before the Arbitrator Picher and it was determined that all the methods used were acceptable.

H: I'm trying to get a better appreciation of what your method of academic squatting is – when you say you do something different with the course that might suggest to the reader that you take a course with one subject matter and give another course with a different subject matter – can you explain?

R: That was not at all the case. That course...

A: The question is: what is your definition of “academic squatting”?

R: My definition as applied in 2005 was – we transformed the course in its evaluation method, its pedagogical method, using a non-traditional textbook – the book which I used for the course was called “Science for Activists” – so there were many transformations, and therefore it was different – but it respected the pedagogical goals and the goals of the course. So, in the academic squatting, as I see it, the goal was to give the best academic method in order to arrive at the best results in order to optimize the goals of the course, even if one must diverge from traditional methods – that was my meaning that I use when I apply it to my courses, but it has a broader theoretical sense.

H: Let's just set aside what you did in your courses – let's just talk about what you wrote in the article – what are you presenting to your readers in terms of your approach about academic squatting.

R: I'm proposing that there's a place for students and the professor together to take charge of a course and even if one must push the limits – even if the conservative university administration might feel uncomfortable – so, if the students have a need, they can bring it to the course – the idea of an article like this is to encourage professors and students to define their own development and learning and to engage in it, rather than just to follow the recipe that's already there – to think “how can we influence the process” – so the goal of this article is, as is often the case in my writing, to provoke a certain thought process. And I think it's because of this aspect that pedagogical journals wanted to publish these ideas, and that attaches to the theory of Anarchism, because in Anarchism the individual takes responsibility for his personal development. So I'd like to refer to an exhibit to explain this in more detail. I'd like to refer to exhibit 115, which is my CV – and I would like to go to page 10 of this exhibit – I'd like to go to paragraph 27 of page 10 – ok you have a different version of this that has more pages – we have to go to page 33, paragraph 27 – there you will see a presentation that was given at a conference of the Association Canadienne Francaise pour l'Avancement de la Science – I was an invited speaker – the theme was Minority, Solidarity, Resistance, and Confrontation: the place of Anarchism in the Sciences – this was an example of this concept that is very linked to academic squatting, and I was able to speak about this concept – another place where I was able to speak

about this concept was the conference of the American Association of Physics Teachers – the organizers invited me to give a talk called “Making Physics Relevant by Academic Squatting” this was part of a panel called “Down from the Ivory Tower: Physics teachers...” – these are exactly the theoretical ideas that I presented at these conferences, and which were highly appreciated – another example of a conference where I was invited by the Department of Criminology of the University of Ottawa – I was an invited panelist in a talk organized by the professors of this department, and the title was “To Find Yourself in the Ranks of Resistances” – and the same themes were discussed at this panel – these are several examples of where these theoretical ideas were discussed, and it explains their relevance in education.

H: Just to close off for today – the term “squat” that’s your invention?

R: No, in fact it was a student who suggested it to me in 2005 – he said “oh that’s interesting, it’s as if we’re doing a kind of “academic squatting”” – and I recognized it as a captivating and catchy term and used it following this observation by this student – because in squatting, especially in Europe, where it is common, the squatters will renovate and improve an old building which has been abandoned – so it was in this sense that I used the term.

H: OK, that’s enough until tomorrow.

A: OK, tomorrow morning at 9:30.

*(End at 4:27)*



Thursday, May 23, 2013

*(Continuation of University's cross-examination of witness Rancourt)*

*(Arrive at 9:40)*

R: I'll refer again to my CV as I did yesterday – at the Conference in the Dept. of Criminology, the Department Chair shared something with me – she told me she received a call from...

H: Mr. McGee, it seems that the witness is getting into hearsay evidence – are we going to allow this kind of evidence or not?

M: I haven't spoken to Dr. Rancourt about his evidence either, so I'm not sure – it might not be hearsay.

H: I understand, let's hear it and let the Arbitrator decide.

R: OK, so given that it was a conference and I was invited, and speakers were announced, the Director of the conference told me that she had received a call from the upper administration telling her not to invite me, that it wasn't a good idea – so she received pressure from the upper administration telling her not to invite me – this kind of pressure happened again recently, because a student...

H: Can we stop right there? If the association wants to add to its bad faith case then it should bring a motion – I can't continuously be going and investigating this – I have to object to the witness leading this evidence – not that I'm not prepared to respond, it's just that if we ever want to finish this case, we need to have some kind of structure to it, and it can't just flow along with Dr. Rancourt's latest revelations.

M: I'm going to say something out of the ordinary, but we're in this hearing, so why not just do it? – I can't decide whether or not it's something I want to make a motion about until I find out about it – I'd have to take a couple of minutes to speak to Dr. Rancourt and ask what this evidence is about – so either we all hear it or I take an unusual step and ask Dr. Rancourt what he's going to say.

H: Two things concern me: statement from someone who organized a conference saying she got a phone call – this is all new information – as long as Association is willing to not point to bad faith and just to add colour to case, that's OK – as for the new allegations, I don't know how this will fit in, but a more practical way would be to just hear the evidence – go ahead Dr. Rancourt.

R: Recently a student in the Common Law department invited me to be a panelist at something he wanted to organize to speak about SLAPP suits (Strategic Litigation Against Public Participation)...

A: One second, there was a student who...

R: Approached me to be a panelist at a discussion in the Faculty of Law about SLAPP suits. When the student wanted to reserve the room, the administration asked him who the invitees were, and they let him know that they could not support the event if I was invited. So the student apologized to me and explained the situation to me, and then they did another event instead where they essentially showed a documentary film. So, this was in response to the questions about academic squatting because it shows the resistance by the university against these ideas or against me.

H: I'm not sure that it related at all to academic squatting, sir, I think you just wanted to interject that. If we could just note for the record that this information was available prior to the outset of this phase of the hearings – if it had been part of the case of bad faith, I would have had Dean Lalonde speak to it, he would have been cross-examined on it – that opportunity is obviously foregone. So I'll object to your reliance on it at the end of the hearing but I'm content to leave that to argument. And if you did receive it, I would point to all the circumstances including this pending litigation as an explanation of the university's actions, if there's any truth to what the witness is saying.

R: Can I just finish my response?

H: Well the last thing had nothing to do with academic squatting, this isn't just a time for you to chat.

A: Is it responsive to the question?

R: It was about the blogs in general – we couldn't find the document yesterday but now we've found it – I want to point to pg. 54 in this CV – there is a section entitled – it's section 12 – entitled "Contributions to the Community and to Society at Large" – and there, I said that my blogs were part of my academic work and that it was always included in my annual report, and there we see at pg. 55, a description of my three blogs, where I explain the target audience of each blog, the fact that I was responsible for the blogs, and the theme of each blog – so, for example, the article about academic squatting is on the blog Activist Teacher, and I said in my CV – "this blog was created in 2007 and focuses on radical pedagogy in academic teaching" – and here the word 'radical' means 'going to the root of things' – it's the original sense of the word – so this completes what I wanted to say yesterday about the blogs and there place as I see it in my academic work at the university, etc.

H: Dr. Rancourt, I'll remind you that when I had you identify Ex 121 – let's just call it the "cop car" paper...

M: Let's not.

H: The “symbiosis” paper? What’s acceptable? Exhibit 121 – you said that’s not on the U of O Watch blog, you said that’s on the Activist Teacher blog – and you said that’s less offensive to have it on that blog?

R: No, no, my goal was not to say what you are suggesting – normally you show the blog heading, with this exhibit you chose not to – so from memory, I specified this – but also, it’s an article for which the theme matches with the theme of Activist Teacher.

H: The record will show that when you were first confronted with this paper you said “oh, that’s not on the U of O Watch blog” – one would expect that you were saying this was less significant – but now we see this was embedded in your CV, and forms part of how you present yourself to the university community.

R: That’s many questions at once – I’d appreciate it if you’d slow down – one blog is about the university of Ottawa, one blog is about teaching – the readership is different – the reason that you claim that I objected to what you said is the following – in the question you asked, when you brought up this article here, we were talking about U of O Watch, and you had asked me what the target audience of this blog was – then you brought forward this article, and I thought it prudent to state that the target audience for this article was different – I thought you were using a spin to suggest this article was intended for the target audience of U of O Watch – it’s one of the only times you showed an article without showing which blog it was from – I wanted to clarify that, that’s all.

H: Now, let’s return to the subject matter of Grievance G-14, and I want to put the issues in some historical context.

R: Excuse me, I’d like some help because I don’t know what grievance that is.

A: That’s exhibit 14?

M: G-14 – there are grievance numbers that do not correspond to the exhibits.

H: It’s actually exhibit 14, by coincidence.

R: Should I take a few moments to read it?

H: Sure, take whatever time you need to refresh your memory of your grievance.

R: OK, it’s the grievance about...

H: I’m not asking you questions about it at this stage, sir...

R: OK, I'm just thinking out loud here, it's the grievance for the course SCI1101 Autumn 2007 – it addresses the content of the course and the invited speakers, etc. I'm ready.

H: Now, both yourself and Dean Lalonde have spoken to the context leading up to the dispute that eventually lead to your grievance – I want to take you back to that and to do so it might be most efficient to use your own words – I refer to exhibit 135, the academic squatting article, pg. 2,

R: I don't have a copy.

H: I'll put the passage on the screen – the 2 paragraphs beginning “it all started with a modest experiment” – 2<sup>nd</sup> page, at the bottom, below the 3 stars.

A: OK, “it all started”...

R: Can I just read this?

H: OK, take a moment. So when you say “it all started” what do you mean?

R: I'm referring to the course in 2005 which was the course about Science and the Environment, which is not the course concerned in this grievance – it was an entirely other question. (*Reads article*). After reading more of the context, I think it was about the strong-arm interventions by the administration – from the best of my memory and the evaluation of the context, it had to do with the conflict I had with the university, which began with this course in 2005, where the Dean of Science at the time, Mr. Christien Detellier, had decided that the pedagogical method and course content were not appropriate, and made that decision following things he saw on the web – rather it was the VP Academic who saw those things and contacted the Dean – and the Dean intervened and told the students the course was cancelled – this intervention by the Dean, the university had to write a letter of apology for this intervention – and I consider that this was the beginning of a conflict, which I did not expect, with the university – because following this event, I felt that the administration was against what I did in that course, even if the course was a great success – the university decided to discipline me for this course – I don't remember exactly the reasons for the decision, but this discipline went to arbitration with Arbitrator Picher, etc. – so the “it” refers to the conflict which began with this action of the Dean at the time.

H: OK, and then, moving to the next paragraph, you say “I decided the course would be a real ... activism – I decided to squat... this may be the first overt instance of academic squatting where one takes a course and does something different with it.” I just want to confirm that this is the first time you did academic squatting?

R: No, not exactly – you’ll see the word “overt” – this was the first time that I explained, via the internet, my non-traditional approach and pedagogical method used in class. So, it was the first time I used the internet to announce and explain a course – and I did it on a website that was not the site of the university – I think I wasn’t very handy with the internet at that time, and I think I asked help from the Teaching Assistant to put this info on the web – and I found this easier than going through the university website – contacting the tech staff etc. took a long time and was difficult, even just updating one’s CV—anyway, this has been explained in the previous arbitration – so, this was the first time I put this course information on the internet – and it was this internet site that “flipped out” the VP Academic, if we can say that, and I think he contacted the Dean two or three times during the day and urged the Dean to intervene as soon as possible.

H: You can carry on, you’re the one who already said this was already established in the Picher award.

R: I’m trying to answer your question – I’m trying to say that what was new was the website and the reaction of the university that followed, because I had given this course many times over the 10 years previous, and many of the pedagogical methods had already been developed over that time – e.g. invited speakers who were not scientists, and who brought their experiences to the class...

A: It doesn’t answer the question – the Employer is asking something more specific – we can’t go too broad here. Please continue with your question.

H: So, when you say one “takes an existing course and does something different”, am I correct that you are saying this was basically a big misunderstanding? The university said you were taking a course with described course content and giving it with different course content, but you say you were giving the same course content.

R: No, I don’t know that that’s exactly it – I would have to refresh my memory about the precise cause of discipline – the discipline letter and the grievance.

H: Let’s put it differently then – would you agree that your position is you were delivering the course content described in the description of the course?

R: Yes, absolutely. That’s my position. And I’ve already explained how I explain the theory of squatting yesterday, I don’t need to do that again.

H: That’s correct. Do you understand how a reader of these words might interpret these words as suggesting that the author was doing something different, namely, being assigned one course with prescribed course content, and giving a different course, with different course content?

R: In my opinion, a reader will see the word “different” as meaning different from the conservative expectations of the administration – it’s different in that sense – different because professors are responsible for their courses – they choose the pedagogical material and in that sense the content – they maintain this professional independence, even if they know that administrators have a more mechanical perspective, as if teaching was filling up a pitcher – there are two cultures – that of the professor and that of the administrator who is too often detached and has an administrative, or “bookkeeping” vision – I was not conscious to what point there was a difference of culture until I saw a Dean intervening in a class directly, in front of my students – that’s when I started to understand that administrators have a very different view about what happens in class – so I think the answer relates to that.

H: Sir, I suggest to you that you are an intelligent individual – you are well aware that readers will read it in that way, and that what you are trying to do is create controversy and bring attention to yourself, isn’t that true?

R: No – you’re suggesting someone who looks for a response, for attention, that’s completely false. The goal here is to inspire, provoke students and teachers to consider that, even if there are administrators with an old or misplaced vision about teaching, that they should not be discouraged by that and that they should dare to affirm themselves and practice what I have described as academic squatting – this means, take the attitude that we know best how to do our teaching and how to optimize our teaching and our learning while protecting ourselves from excessive administrative influences.

A: Protecting ourselves against the administration.

R: I want to clarify – not “against” the administration – (...) – it’s the professors responsibility to teach, as best as possible, and it’s the responsibility of the student to learn as best as possible – it’s to encourage students and teachers to maintain this vision rather than getting crushed by an administrative machine that wants to push towards more powerpoint, etc. These are complicated concepts, not such information – if it was just information, we could give photocopies at the beginning of class and simply ask students at the end if they’d read the material – that’s not the goal at all – the goal is to understand concepts in depth, and to be conscious, while doing it, of whether we understand or not – in other words, to take control of one’s learning.

H: So...

R: I’m not finished.

H: *(Audible sigh)*

R: Now with this interruption, I’ve lost my train of thought.

H: Take a moment. So, if I can summarize – this is about pedagogy, it's not about embellishing the reputation of Dr. Rancourt as a revolutionary anarchist or activist. Does that capture it?

R: No, because the first part of your question was “this is all about pedagogy” – it's also about professional responsibility, it's also about – it's not just about pedagogical techniques, but also about the task in front of us as teachers and students who must learn – my goal is not to develop new pedagogical techniques – that's not my goal at all – the pedagogy that I'm applying is not new, it's a domain in pedagogy – it's called Physics Education Research, I've already mentioned it – and it's inspired.

A: It's called....

R: Physics Education Research (PER) – it's an international research domain that seeks to discover the best ways to teach physics – it's inspired by what some in the domain call radical pedagogy – and again, the word “radical” means looking for the root of things – so it's something that was developed by the great pedagogues such as Paolo Freire, for example – I'm not the one who invented this pedagogy – I research it, discuss with researchers in that area, in order to best improve my teaching methods in physics. Additionally, as well as applying these ideas as best as possible, I write articles and give presentations in order to communicate my experiments, my recommendations, and my encouragement, related to applying these methods – as well as using these methods in my class, I promote the benefits of these methods. My goal is not to attract attention towards me, as the university suggests – my goal is to improve teaching of the sciences. I also want to create a debate about teaching science.

H: Well let's explore this a little further – one of the earlier days I put to you some comments that you made when you spoke to an audience at Queen's University in October 2008 – and in actual fact it related to discussions with your lawyer and we decided not to pursue that – but we've addressed your presentation to Queen's before, and I'll put it on the screen – this about this very subject we're talking about – I'll read the passage, and maybe you'll want to look at the context...

R: I don't identify the document.

A: What's this document?

H: We produced this to the Association more than a year ago – want to ask him if this is an accurate transcript of that presentation.

R: No.

D: Number is UO00001670.

A: And what page?

H: It's about 6 pages in...

D: On page 5.

H: Can I ask the question first? Want to pose the question then maybe we'll take a break – I'll ask you to confirm if this was recorded accurately, you said "in 2005 I chose to transform my class into an activism course – I told my students it would be impossible to fail..." ask you if this is an accurate transcription?

R: I want to see the whole document – this seems like a report written by someone at the university.

A: The question was "is this an accurate rendition of what you said"?

R: OK, I would like to see the entire thing – I didn't write this, I don't know who wrote this, I don't know where it came from – I want to see the entire thing – I don't know anything about this document, and I would like to see the document in its entirety before responding to your questions.

H: That's fine, sir, but we're just asking you now if that's an accurate rendition of your transcript – are these the words that you said at Queen's?

R: I hear your question, but first I want to consider the entire document first.

A: What I understand is that you are not responding to the question which was "do you recognize what is said here as your words from that conference?" – you say, "I remember" or "I don't remember", but the question is "Are these the words that you said?"

M: Just to specify – I think the question was "do you have any reason to think you didn't say that?"

R: So, yes, I have many reasons to think I didn't say that – just to specify – I am not refusing to answer the question, I am just making a request to see the document first.

A: OK, I am rejecting your request and I ask you to answer the question as posed.

R: I would like to state that the document has many missing parts.

A: Please answer the question.

R: OK, what was it again?

M: "Do you have any reason to believe that you didn't say that?"



R: And what was the “that”?

H: It begins at “...” and goes to “institutional evaluation”.

R: Yes, I do not remember saying this with that tone – it was a presentation of 3 hours, and this is not something I remember – I may have said something similar or very similar to that – I don’t remember and I contest the form and the tone of that as an excerpt – perhaps if it was during a question period following the discussion, I would like to know the context...

H: Sir, the question is simple – did you say those words or not?

M: That wasn’t the initial question, though.

A: Did you have any reason to believe you did not say that?

R: The reasons to believe that I did not say that – it’s possible that I would have said that in the context of a discussion that I would have said those words.

H: Thank you – it’s probably a time to take a break. You have a paper copy – do you want to read that?

R: No, my point is that I want a complete copy of this document – there are missing parts.

H: That’s correct – this is not a complete transcript of your remarks – but you read through it – it’s an extensive transcript of your remarks – you read through it and see how accurate it is, and then I’ll have some questions about your remarks.

A: We’ll take a break and give you the opportunity to read through the document.

*(Break at 10:43)*

*(Resume at 11:03)*

H: Are we all set?

R: I would like to give a response to your last question. A more complete response.

H: No – you’ve already given an answer – there’s nothing to clarify – nothing to clarify – we’re moving on.

M: The last question was...

A: I'm going to allow him to give clarifications – not to give clarifications but to complete your response.

R: I understand better – I'm going to respond as well as possible to the question – you asked me a question, and the page numbers are not there on my copy, pg. 5 I think – I'll just quickly number the pages now, because there may be more questions about this document...

H: Oh, there will be.

R: OK, so we're at pg. 5, and you've asked me the question "if I said these words, etc." – and I'd like to say that, even though the context is missing – I see a comment in quotes at the top of the page – I think it's a comment by the person who wrote this, and it summarizes much of what's here – so context is missing, but despite this, I can tell you that the 3 paragraphs of pg. 5 are typical and the kind of thing I could have said in this oral presentation, which lasted 3 hours – this is the kind of thing I could have said, it resembles – there are other parts in the document where I see things that I would not have said such things – but these things, it seems consistent with the presentation as a whole, and with the language I would have used – so, I can confirm that, and the precise paragraph about which you asked me, as well – but I would like to give the context, and the meaning of the words I said, "I proposed to the students that it would be impossible to fail, and no institutional evaluation" – that's the part you highlighted – must understand that, in the introduction to that

A: I'd like to ask what parts you're referring to?

R: I'm looking at the part Mr. Harnden highlighted and talking about the context here.

H: I'll just clarify – I read the sentence before, which is most germane to the subject matter – we'll get into his practice in relation to grading later...

R: The sentence is "in September 2005, I chose to change my physics course" – so related to these sentences.

A: I just want to make sure I know which sentences you're referring to?  
(*Reads beginnings of sentences*)

R: I'll focus on "I propose to the students that it would be possible..." – I want to give context there. So, that's an event at Queen's University, where I was invited by the organizers of a series of talks where, once a month, they invite someone from outside the university to come – it was October 17, 2007 – this conference was written in my CV, which is exhibit 115 at pg. 48, paragraph 62. There I gave the title of the conference and reported that I'd given that conference – so, what I remember is that at that event there was an informal discussion at the beginning, then a part where I gave a presentation, then a long discussion with

the attendees, then student media asked me some questions – all of this lasted a good part of the afternoon – 3 hours from what I remember – there was a lot of activity, many people in the classroom, people sitting on the windowsills, etc. it was full – I remember that at the beginning of this session, I explained the problem of stress for students, and the pressure that they put on themselves, and the fear of failing, the fear of not properly performing in order to get scholarships and to advance – I spoke about the problems of the traditional system, where the evaluation is such that we must create a competition between students and, in that period, at the beginning, there were many exchanges, and they shared their confirmation of this, etc. – so, I spoke about that and about that fear, and I compared that competition-based method, which is called “ranking” – some students have high notes, some low, some middling – that ranking terrifies students – we spoke about that, and I wanted to speak about the methods which could resolve this problem, where I try to remove this problem – the central idea about how to remove this problem is called an evaluation which is centred on the student, “student-centred evaluation” – so at first it was a session of sharing experiences, then a presentation – I wanted to create an environment where they could feel free from the stress and could interact with their professor – so I brought up the technique of academic squatting, and explaining and speaking about the history of the course, I said “I proposed to the student that it would be impossible to fail” – what I meant by that was you can’t fail in the sense that I would simply fail you – I meant, when I evaluate your progress and your participation in the class, it results in you not being able to fail – because you will follow your authentic desire to learn – that was a course in 2005 which was supposed to be a course for general scientific culture in the Faculty of Arts, where students are horrified by science courses, because they are afraid of Physics, and they gave me the task – the director of the program told me “we want to remove the fear of physics – that’s the goal of the course” – and I was completely in agreement with this approach – so I made efforts to go beyond the white-faced fear that I saw in the students, and I wanted to tell them “I’m not there to fail you. This isn’t a course in which the goal is to fail you or to make you physicists. It’s a course in your Environmental Studies program where we expose you to science and to physics in the context of your program, so please relax – it’s not about that – I want to open your minds” – this was the course Science and Society – so it was in this context that I said “it’s impossible to fail” – it didn’t mean that if a student was lazy and didn’t come to class that I wouldn’t have intervened in all the power that I had -- never in my career was a student so lazy that they didn’t come to class – in the context of this presentation was to excite the people present, to liberate them from the heaviest burdens that the administration imposes on people – so in that context, in front of a group, I sometimes exaggerate to make my point, to insist on the point I want to make – I admit that this paragraph, read in isolation, can give a improper information, can misdirect the reader – I admit that my goal here is not to describe something but it’s an oral presentation in interaction with others, in comes out “on the fly”, and that’s how it came out at that point, but if this text, which was not supposed to be a text, is misinterpreted by someone or brings out a misunderstanding, having known this, I would have tried to clarify it – but in the classroom, in interaction with the people there, I felt that the people understood my intention and had many occasions to pose questions and ask for clarifications – but I admit it was an event at which I

carried myself with a lot of enthusiasm and I said a lot of provocative things – I tried to create a memorable event which opened doors rather than a document which existed for people to read. So that's how I would explain the context of these words.

H: Dr. Rancourt, what do you think motivated you to be so over-enthused that you would mislead a public audience with respect to such important facts and say to them “I propose to the students it would be impossible to fail and there would be no grades and no institutional evaluation”?

M: Objection he would have to agree that he mislead the audience.

H: OK – I'll rephrase – “In your over-enthused state that you mislead that audience on that occasion with respect to what you proposed to your students in the Phys and Env class?”

R: Now, I don't know if it was “over-enthused”, it was “enthused” in the language I used – I had the intention of doing what I did in that talk, so I don't agree with the qualitative word “over”. The 2<sup>nd</sup> part is, “did I mislead the audience with respect to what I proposed to the students?” – my goal was not to say exactly to the audience what happened in the 2005 class – the audience was not interested in the details, that wasn't the goal of the presentation – but, I admit that that could cause a misunderstanding or misdirect someone who wanted to know exactly what happened in that class – but, if there was someone wanted to know that they would have had the opportunity to ask me – I admit it could have caused misdirection – the goal of the event was not precise information – it was more the meaning of what I did and the central idea and goal of this method – so I don't think there was someone who was misdirected, given the goal of the event and the presentation – I don't think there was a serious – I mean I understand that my Employer could have been confused and misdirected, and that my Employer could have asked me what I meant by this – by my Employer never informed me that it had this document, which it had for a long time, and never asked me about this document, and I only found out about it through another process, not because my Employer showed it to me. If I perceived misdirection in the audience, I would have done my best to change it. The audience seemed to be more concerned with the big questions, and I think they understood that when I said “impossible to fail” that I meant “student-centred evaluation” – I didn't have criticism about that, in my memory. So, misdirected, that depends on the goal of the information and of the person, and why he's interested in that information. But if they were misdirected, it was not my intention to give them the wrong impression – it was my first and primary intention to communicate the possibility to break with very severe constraints which are imposed very often in our courses – in order to succeed in communicating this, sometimes we have to push the limits and be provocative, and this is what I did. If someone, during the presentation said “Listen, Mr. Rancourt, Prof. Rancourt, this is really bothering me that you said you did that” – I would have said “OK, wait, why is it bothering you, and let's look at this in detail, because maybe there's something you don't understand” – but no one said “that's worrying” or “that's wrong” – so I

maintained the impression that people understood my goal as an intervener making that presentation – there was an understanding between myself and the audience about why I was there, and I think that this understanding was satisfied.

H: Finished? There's another possibility Dr. Rancourt, that you're actually telling the truth to the audience?

R: Yes, I do tell the truth, and I explained in the context what it means. And I've explained how I believe that people understood.

H: I take you to the next sentence, immediately following – you say “they could criticize any aspect of the course and steer it in any direction” – you didn't want your audience to believe they could take it away from the course description, did you?

R: If it was about moving away from the standard curriculum and doing more than what was in the course description, then yes I allowed that. It's OK to do more than what is written in the course description. That's what I mean by that sentence.

A: Just a second, before we go to another question – we've been talking about this document for a long time but it's not in evidence.

H: Now that the witness has seen it and said it's accurate transcription I would propose we put this in as evidence.

M: It would be unusual – he's only talked about a few paragraphs.

A: I think it should be entered as an exhibit on which the witness was questioned, otherwise I have 10 pages of answers on that document and I don't have the document in front of me.

M: That's fair.

A: So we are now at exhibit 136.

R: Regarding “misdirecting the audience” we need to look at the parts “impossible to fail” etc. – I want to say that there were many professors in the class, and none of them, in my understanding – and I had the chance to speak to many of them at the event – none of them informed me they misunderstood, or questioned me “is it really permitted at the UofO, because here it's not – etc.” – nobody misunderstood what I said, among all the people I spoke to – everyone understood that some things are clearly unacceptable, e.g. not following up with students, etc. – no one let me know that this is what they understood from it – so in my sense, everyone seems to have understood very well, even if, I admit, the words in isolation could cause some misunderstanding.

H: Let's follow up and see if there's any truth to what you're saying – let's carry on here – “invited speakers would rock them and they would design the content and the research and interchangeable work groups – a website on these points was quite explicit – the 90 registered students embraced the program – those who wanted to learn physics could use my free textbooks.” Why were you distinguishing the students who wanted to learn physics from the rest?

R: I'm just locating that part – OK, yes. So your question?

H: Don't you agree that it's not a matter of isolated passages – your whole messaging to the audience was that you took a course about physics and did something entirely different, didn't you?

R: Well that's a different question – you started with something else. I would like to explain the sentence you mentioned. It's very important.

H: I agree.

R: OK, so this course in 2005 – there was an agreement with the administration that the students who were registered in the Physics and Environment course were going to be obligated to learn physics using this textbook “Science for Activists” – what must be understood is that the Dean intervened in class and the administration relayed a great concern regarding this website for the course – and they clearly wanted to remove me from the course – I reasoned with them, explained the situation, that there were many members in the course who were community members, not students, registered as auditors or not registered at all – people who took the course for interest – I said “with those students, I propose to follow their individual interests – that they have liberty” this is what I had planned and what I wanted to do according to my pedagogical method – they said yes, OK, but we're going to write down an agreement – my first position was that there was no need for an agreement, it's all planned, there will be invited speakers, it's already arranged in that way – they wanted me to use another textbook – I said no, my book is better and more adapted to the program – I had professional responsibility – it was a tense discussion, we had those discussions – they insisted that there be a written agreement, because it was already what I wanted to do, and nothing was changed for the agreement, but they wanted to save face, in my opinion, because the Dean had intervened in class in a way in which everyone agreed was not the best – so the agreement foresaw, itself, that some students would not necessarily follow the scientific content of the course – it wasn't necessary – however, they did all cover scientific content at the end of the day – and “those who wanted to learn physics” were the students who were registered in the Environmental Studies course who needed it for their program.

H: Are you finished, sir?

R: No, I'm waiting for the Arbitrator. So "those who wanted" refers to that group.

H: Could we assume that you identified yourself, when you gave this presentation, as a professor employed by the UofO?

R: No, there were posters, there were announcements for the event, I don't have the habit of saying "I'm Denis Rancourt, Professor at the UofO" – no I'm more informal, it depends on the context – if I'm in a physics department I'll say that I'm a physicist, but I don't have the habit of starting a presentation in that way.

H: It wasn't a trick question.

R: No, but I didn't consider it to be, I'm just responding to your question – I don't formally present myself like that – people already know who I am.

A: But anyway, there would have been documents announcing the event?

R: Yes, exactly, there were posters, etc. – everyone knew. I don't like presenting myself formally in such a presentation, because I try to break with the constraints of the institution – so I like to enter into the material very informally. As I explained, at this conference I asked them to present themselves, and we had an exchange before even beginning the conference.

H: Were you at all conscious of the fact that as an employee at the UofO, there was some importance to not misleading people about what was going on in your classroom?

R: I find it important to not mislead an audience, independently of my position. I don't think in terms of "because I am a professor, I must not mislead the audience" – I say, I'm invited, and I should do the best job because they invited me – I wasn't there in order to explain a medical physics concept that if misapplied could harm people – in that type of technical conference at a specialized conference, I have an entirely different approach, and the precision of each statement becomes the top priority – that's another context.

H: Perhaps another way – can you confirm that you made your best efforts to tell that audience the truth?

R: No.

H: *(Laughs)*. I'm sorry, I apologize.

R: If you say "the truth", you mean that each sentence in isolation must be judged as truth by an outside person, then no, that wasn't my objective – my objective was to make a presentation that would really bring to life my pedagogical methods etc., and to do it in

an exciting and provocative way – that was my goal, and I think I was entirely truthful in trying to achieve my goal – but what you want it to mean is “is each sentence in isolation the truth?” – no, this was “on the fly”, I was giving people encouragement to do research on this question – the presentation was a catalyser – it wasn’t done in order to give precise information – that wasn’t the goal.

H: Dr. Rancourt, I can’t help but be struck by your resistance to this concept of truth – you recounted certain events at the UofO – did you or not make an effort to relate the truth?

R: This is your concept of truth – you want to look at each sentence and say “Ah-ha! This means this and that” – what I’m saying is that in my meaning, this was the truth.

H: Approach it this way – you’ve read this document – is there anything in here where you would say “I’m sorry, I lied – that’s not factually true”?

R: There are parts in this document where I look at it and say “Oh. If we take that in isolation, that’s not good”. The sentence you highlighted, for example, I see that one could get hung up on that.

H: Tell us the problematic sentence?

R: I don’t remember which one.

H: OK, please read and find the problematic sentences.

A: Can we zero-in in the document, which has 8 pages?

H: I thought he was referring to the passages that I had put to him.

M: No, I think the question was “is there anything in here” meaning this document.

H: No – I apologize.

A: To make sure that we’re not going astray here, you are referring to the passages with the sentences “we as profs have freedom...” to the end of that paragraph?

H: Yes, indeed.

A: So we’re dealing with 1 paragraph.

R: In that case, I don’t need a break.

M: Do you want a break anyway, Mr. Harnden?

H: Yes, I do – you’re very thoughtful, Mr. McGee.



*(Short break)*

H: Whenever you're ready, Dr. Rancourt. I'm back from my break.

R: OK, it's not an easy task, because there are parts where the university might be concerned, and there are parts where there is a probability that the audience would find something problematic.

H: Not talking about what the university thinks, talking about the truth – any passages with misstated facts?

R: OK, the sentence “I proposed to the students that it would be impossible to fail” – I identify it as something that the university could find problematic, and something that Mr. Harnden would like to underline – but, if your question is “is this sentence OK in the context of this paragraph” I would say “yes” – each thing, for example the Environment course I had developed and always given into an activism course – so we can say “what is an activism course” – the university may say it's not “factual” – but what did the people in the audience think about that...

A: That wasn't the question – the question was identify parts that are factual or not.

R: But what I want to say is that what is factual depends on the context.

A: The question is “are there parts that are not factual”.

R: The best response I can give is that what is written here is factual – but just to give an example – the sentence “the VP Academic saw the website and had an allergic reaction” – I know that he saw the website, that's a fact – it's obvious that I don't mean he had a real allergic reaction – I mean he reacted negatively – so, for me, that's a fact. I think that all the sentences, in the manner in which I have described it, are factual.

H: Let's just take one more sentence – 4<sup>th</sup> line, next paragraph, please comment on if this is factual – “I have not graded since, in any of my physics courses or in any other course” – is that factual, Dr. Rancourt?

R: I would say that what I meant to say, in the context, what it means in the context, is the traditional method, which is called “rank ordering”.

A: Excuse me, “rank ordering”?

R: Yes – to put in order from highest to lowest – this is the method where one imposes that someone fails, someone excels, etc. – in my entire presentation, the term “grading” refers to the traditional method in which we impose, external criteria on the student and non-grading or “I have not graded” – this means non-grading – which means the method

centred on the student, his individual progress, his individual development in the course, and his participation – so the term in pedagogy is “student-centred approach” versus “extrinsic”, versus imposed from the outside and not taking into consideration the learning process of the person – so in this context, that’s what it means – I was intentionally using short words rather than explaining the thing over again – this allows me to use phrases that are more shocking and more provocative, if you like – this allows me to move people who are quite lodged in the constraints of the traditional approach – given this meaning in the precise context, this sentence is certainly factual.

H: We’ll circle back to this document as we go forward, Dr. Rancourt, so I suggest you might want to read it carefully.

A: It’s now 12:15.

H: That’s fine we can take a lunch break.

A: We’ll come back at 1:30.

R: Does Mr. Harnden have specific sections that he wants me to read?

H: No I’m just saying later in the hearing, probably next month.

*(Break for lunch at 12:15)*

*(Resume at 1:36)*

H: Dr. Rancourt I have questions related to exhibit 136 – flowing from what we did this morning – for clarification, you were describing your practice of academic squatting in relation to the Physics and Environment course given in 2005 – did you adopt the same approach to academic squatting when you delivered the SCI1101 course, or did you...?

R: Uh, that was in 2007 – SCI1101 was in 2007, two years later.

H: That’s right, and just to be sure you understand my question – you described what you say, that you academically squatted the 2005 course, and I just want to know if you developed a new squatting technique or if you developed a new technique?

R: I understand, I think – my response is the following: in the course SCI1101, which I gave in Fall 2007, it’s called Science in Society, there was no squatting – the squatting method was not applied, because the course was constructed exactly according to the desires of the students and myself – it was a course that was designed and conceived by myself and the students – so we could decide and explain in detail to the council for course development, the methods we wanted to...

A: The council or the committee?

R: Ah yes, in fact it was a committee – in fact there is a series of committees we must go through in order to create a new course – anyway, the students participated in great numbers in these committees and they had an energetic participation – these process lasted about a year, and we were able to make it clear to the committee members and administration members exactly what the pedagogical method was that we wanted to use and the marking scheme, and the fact that we would have invited speakers who would not necessarily be scientists, etc. – so we elaborated on all of this and the committee members agreed, even if it was not necessarily their domain – through this process, everyone chose to be as transparent as possible and we tried to, in a sense, educate the administration to what we wanted – so this was a long process, and the committees admitted that the only contractual constraint was not to assign to us a pedagogical method but just the course description – everyone understood this because that's the norm – normally, the course description that's announced to the students guides the professor regarding how the course forms part of the program it's in, and other details about the course – the rest of the work, after describing our reasons for the course, was to write a detailed description of the course, decide if it would be English, French, or Bilingual, etc. – this process lasted several months, more than a year, I believe – so, it came about that this would be the course to accommodate our great liberty, if you will, and to invite students from all departments and all faculties, that it would be a course open to everyone without restriction – the only restriction that was imposed at the last minute, and which I did not agree to – the committee decided to add to the course description that the course could not count towards a degree in the Faculty of Science as an elective within science – I disagreed, and I had my reasons, but that was an administrative restriction that was imposed following consultations with the departments – the creation and approval of this course was very out of the ordinary, because it was very unusual to have so much discussion about the creation of a course – it had never been seen before, consulting all the departments after the course had already gone through the first committee – I think we had 9 committee meetings in total, this, I think, was a first in the Faculty – I think one of the reasons there was such a long process was because there was a resistance on the part of the administration to seeing such a course – it created a longer process than would have been the case – but finally the students and I got the course that we explained to them – on paper it was just a course description – but we did an entire process to explain this to them. So, it was not a situation where there could have been academic squatting, because there was nothing to squat – we gave the keys to the students and said come into the house – you say you want to decide how the house will be decorated, et voila.

H: Turn to exhibit 13 please, just want to reference the course description so we can orient ourselves.

R: Yes.

H: Do you agree that the course description is as set out in the 2<sup>nd</sup> paragraph of Dean Lalonde's letter?

R: I don't remember, excuse me – it's possible that there was another sentence that said the course would not count for credit in a Science degree program. There's a course calendar, in which each course has a code and a short description.

H: I don't want to interrupt you, but let's go to exhibit 14, which is your grievance where you say "the official course description is..."

R: OK, but I think in the course calendar there is an asterisk with that comment about the Science program.

A: But apart from that comment about the program, is it the same text?

R: To the best of my memory, this is it.

H: Did you take it upon yourself to check the official version when you filed your grievance? I don't see why we have to get into this.

R: I don't remember the details, surely it must be right. I mean, when I write a grievance I normally take great care in verifying the information, so I would have checked carefully in the calendar.

H: Were you aware, prior to your delivery of the course, that the administration was concerned that your plan was to take this course and squat it?

R: At what point?

H: In the summer preceding your delivery of the course? Summer 2006.

R: The question is not relevant because the course was approved at the last minute...

A: It's not up to you to decide what's relevant – your lawyer's job.

R: What I mean was it was not a good choice of words – excuse me – we didn't know the course would be approved before the beginning of August – and the question was did the administration have concerns before the course was even officially approved that I could already have an improper intention.

H: Squatting the course.

R: I don't have a letter from the Dean or anything.

H: That's not my question – were you aware the administration was worried you would squat the course? That's not complicated.

R: No, it was a whole process that lasted a year – if you want to say that those discussions concerned the administration, sure I was aware that the administration was concerned, because I was part of that process, I participated, I intervened, I heard the concerns of some of the departmental chairs, I was aware of the concerns. I hope that responds to your question.

H: It does.

R: And, in general, my responses to these concerns was that they shouldn't have these concerns – I tried to alleviate these concerns by further explaining the methods at issue and referring to what happened in the 2005 course – so I tried to reduce these concerns in this committee work.

H: You may recall that Dean Lalonde testified about how these concerns existed in the Faculty and administration, and he said he wanted to give you a chance – so he fought to get you that course, and give you that chance. Do you remember that being his evidence?

R: I remember that he testified in that way, yes.

H: And would you agree that he, early on in his Deanship, risked his reputation in order to support you in giving this course?

R: No – I would call this question a spin, because I don't see how that would risk the Dean to support a course that had a great potential, that students were asking for, and that would be given by a very well-known professor in the Faculty. I don't see how that would risk the Dean.

H: OK, could we turn to exhibit 16 please. Did you send this email on July 3, 2006?

R: I can't confirm from memory, but apparently, yes.

H: At this point in time the course description had not yet been approved?

R: Yes, that's true.

H: This was an email sent out in anticipation of SCI1101 being an approved course?

R: Yes, we didn't know the course code at the time or the precise nature of the course, but it was in anticipation of the creation of this course.

H: And who were the recipients of this email to the best of your recollection?

R: Uh, to the best of my memory, it's an acronym that means Alternate Voices Series, I believe – and this was a group of community members who wanted to be on this mailing list to be kept up to date about the film series that was later called Cinema Politica and that was at first called Alternate Voices Series. So, I created a list of emails when I began the series, partly to give extra material in the 2005 course, and also to open these films to the community – the community members who weren't on the student lists, I offered to collect their emails in order to send them announcements about these films. This is what it was, to the best of my memory. So some were students, some community members, etc. So the goal of my email was to announce that there was something coming up and to announce the elements of this thing that might be of interest to them – but I admit that I could have been more clear that the course was in the development process and was not yet fully established – e.g. I didn't know what program it would be in exactly – at first we wanted something that would not be in Environmental Science and that would be called The Activism Course – the Faculty of Science wanted to narrow things, which brought us to the Science in Society course – but I knew that this course could accommodate people who had broad interests with the Cinema Politica series, which became a discussion series, as well – so I wanted to generate an interest for such a course, so it was an outreach effort – so, that several months later, we created the course SCI1101, and the Cinema Politica series took more of a discussion bent – this accommodated all the needs. But it was a way to say to these people “even if it's summer and we don't have events on right now, when it starts up again there will be some things going on that could interest you, so tell your friends, etc.”.

H: So is it your evidence that this document does not describe the course that you ultimately delivered?

R: That's true – absolutely – I agree with the “does not”.

H: I refer you to your email at exhibit 17 – and in particular, the 2<sup>nd</sup> paragraph of your email to Dr. Moon, where you state “yes, the email in question was sent by me and yes, it relates to the Science in Society course which has passed every level of committee except the Executive Committee of the Senate, which is slated to review it on August xx”.

R: OK, I've read part of it. So when I said “related to” it's because I – I admit that when I wrote to the Dean it was somewhat out of frustration, because I wasn't used to someone getting my emails to the community and sending them back to me – I think it was a mistake to write in this way – with more experience I would have taken the time to explain it to the Dean – but here I was angry to see my communications, which I considered private, to be scrutinized by the Dean – I was shocked, and as one would say in French “*j'avais emballé*” – in my mind, I got carried away, this wasn't a serious exchange – in my mind I was very devoted in my work and I did not appreciate it when someone came to me with questions which dug too deep into what concerned my responsibilities – the way I organize my work and my responsibilities – I think that's why I responded in a way in which, I would say, with hindsight

and knowing that these same people would go so far as to fire me, I would not have responded in that way, that's certain – for me it was a free exchange and I allowed myself the kind of liberty to “*emballer*” that I would take with my colleagues – the university culture allows us this, and this explains the tone.

H: Are you finished, Dr. Rancourt? Perhaps you could clarify it this way – were you telling the truth to the Dean back in 2006, or are you telling the truth today? Which is it?

R: In this email, you mean?

H: You've given an extensive answer, but I think what you're saying is “I was angry, and perhaps I misled the Dean at that time” – correct me – or did you mislead us 5 minutes ago.

M: Objection.

A: I think when you said “you mislead us 5 minutes ago” that's something to be left to argument.

H: OK, I'll withdraw the students. OK, 5 or 10 minutes ago, in reference to exhibit 16, you said “that did not describe SCI1101”.

R: Exactly.

H: And then I put exhibit 17 to you, where you say to your Dean, “yes, it relates to the new SCI code Science and Society that has been approved....August 14”.

R: Yes, well the “relates to” is not the same as “that's exactly what I meant to do” – the “relates to” in my mind, means in the outreach email exhibit 16 – I wanted to keep contact with them and refer to Cinema Politica, etc. – “relates to” means I thought about it when I wrote the first email – that's what I meant, and I didn't explain it further because I was frustrated – now, with hindsight I see that it was immature – but if the email caused him fear, I wanted to leave it ambiguous so that he would ask me more questions – but I admit this email was clumsy, and if this caused a great concern about the administration about the course, I must apologize, I find that unfortunate that a single email like that – where someone got a hold of an email to the community – I'm sorry if that caused a great concern to the administration, but it comes from a lack of experience or not realizing that it could start a snowball effect and cause a great concern in the mind of the Employer, if that is what happened – that is my explanation. I must say that in my career, I was often a little awkward like that with departmental chairs and deans. I think it's the kind of character that's often tolerated in academia – it's the attitude that “I'm in control of my professional work and people shouldn't interfere with that” – it's a bit of protectionism, perhaps, and it was in my culture – we could see that as immature or awkward, but it was my culture and part of my personality.

H: Well let's look at the letter from the Dean that you're responding to – that's exhibit 15: "the attached student has circulated to some students in your name, and I'm curious if it's in relation to the course SCI1101 which is still under development..." Isn't this a very reasonable request from your Dean?

R: Yes it's not up to me to say whether it was reasonable or not – but the way I saw it myself was that he didn't tell me who was this 3<sup>rd</sup> person – he said "I have received inquiries about..." – in my mind, perhaps a student had seen it, perhaps it was a professor – he said "I have received inquiries" – so maybe it was a professor who said "hey, have you seen that?" – for me, it was a Dean asking me a question about something that he shouldn't have been worried about – I was frustrated and I felt that I was being questioned, whereas I felt that everything I was doing at the time to implicate the community etc. was a great devotion and I was doing good things, and I was frustrated to see those things called into question rather than – I don't know, the Dean could have stopped by my office and discussed with me and asked what this email was about – I reacted poorly and that's how I see it.

H: Is there any reason you didn't tell your Dean "don't worry about that email I just sent to all those people – that's not the course I intended to deliver?"

R: Well I explained my reaction – I can't explain why my reaction wasn't different. I couldn't imagine then that there was a deeper problem. For me it was obvious, we were in a deep discussion about creating a course, and it was obvious that's what this was about. It's as if someone said "this email suggests you're going to do something and it's not honest, there's something wrong here" – that's what this email said to me – as if it said "even though you're so devoted to creating this course, participating at committee meetings, I see an email to a 3<sup>rd</sup> person and this is your course, and you're going to do something very different" – for me it was a kind of outreach to respond to people's interests – so I reacted as I reacted – I took it poorly – it was a mistake on my part. I don't remember if there was a response – Mr. Thomas Moon sent that to Louise Pagé-Valin who was the head of Human Resources at that time – it was as if the Dean sent this to the people who were in charge of discipline, for example – but I don't know if anything came of this – if I'd known that this had been sent to Human Resources, I would have asked for a meeting, etc.

H: Could we return to exhibit 16, please? Your evidence is that this document doesn't accurately summarize the course that you delivered – could you tell us the differences?

R: Let me read it more carefully – I'll make notes. I would say that many, many of these elements were found in the course Science and Society – but the reason I said it wasn't a good description was that the description as it is here does not reflect the "science in society" aspects – doesn't show enough of the science aspects – the email is more geared



towards the interests of people on the mailing list – when I say “some characteristics of the course”, I would say that these points describe fairly well the pedagogical methods of the course.

H: What about the characterization of it as “an activism course”?

R: So, all the students knew the 2005 course as the “Activism Course” – that was the common name we gave it – so this was to say it would be the same kind of course, to use the known name on campus – I put it in quotations because I want to acknowledge it’s not the official name, etc. – so it would have the same pedagogical method, the same structure, same way of choosing material, as the 2005 course – and this was all true, in the sense of how it was carried out in reality – the 2007 course was a carbon copy of the 2005 course, except for the course description, so the content was different.

H: So just to be sure we’re in the right year – you made a convenient list of your courses, exhibit 119 – I’ll just reference in that list, SCI1101 what year was that?

R: Ah yes – I’ve made a mistake in what I said before – the Science in Society course was in Fall 2006 not 2007.

A: So you say that the 2006 course was the same as the 2005 course...

R: The 2005 course gave rise to the creation of the Fall 2006 course, Science in Society. The same pedagogical method – everything was essentially identical, except for the course content, which meant that the content was adapted as a consequence.

H: Could I take you back, please to exhibit 135 – you begin the article by saying “I teach an activism course at the university of Ottawa” – which course are you referring to?

R: What’s the date of this article?

H: April 13, 2007.

R: OK, the date there is the date that it was posted on the blog. But, in fact it was written before – when I wrote this, I was talking about the 2005 course, to the best of my recollection.

H: I think you should take a moment to review the whole blog, to be fair to you.

R: Yes, I may have written a first version and then a later version. I

H: You mention SCI1101, so I think you should read it.

R: I remember thinking about the 2005 course when I wrote this, so yes I would appreciate some time to read this over.

*(Afternoon break, 2:43, continue at 3:06)*

H: Are we all set? My earlier question – you wrote this blog and said “I teach an activism course at the UofO” – which course?

R: So the goal of this article was to present the concept of academic squatting – so it opens in that way – if we look at the text, I use two courses as example – the 2005 and 2006 courses – they resemble one another in terms of the pedagogical methods – so Physics and the Environment and SCII101 – but squatting wasn’t necessary in the second one, as I’ve explained, because the course was created as desired – squatting is the process of making the course address what the participants want – so in the article I refer to 16 committee meetings to establish this course – earlier I said 9 meetings – and it took 11 months – this was never seen before – so it shows how much work was done – the course was accepted with this pedagogical method – not explicitly, but it was all discussed and it was accepted.

H: Thank you – you do understand that it seems just a wee bit surprising that you entitle your article “Academic Squatting”, you refer to SCII101, and now you’re telling us that you did not use squatting in that course?

R: No, it’s referred to in one place – and I’ve just told you that the method of squatting can include a component in which one interacts with the institution – and the process of approving this course, which took 11 months, was a great learning experience for all involved regarding the institution, the attitudes and rules, etc. – it was a very rich learning experience for all involved, including myself – in the article I explain that this was part of how the course was created – and I explain that it was approved – there’s no contradiction here – the house was renovated and they gave us the key – but the process could be called a squatting in the sense of this article – I don’t think there’s a contradiction.

H: Thank you for that explanation, Dr. Rancourt – could I refer you to the paragraph beginning at the bottom of pg. 3, exhibit 135 – the words the opposite atmosphere.

R: The paragraph at the bottom of the page?

H: Yes, beginning “the opposite atmosphere reigns in the classroom...” – can you tell us what course you’re referring to there?

R: Well, in the article – it’s a general article – I’m describing the activism course in general, I believe it’s a mix of the two – the way it’s written, it’s as if I was talking about one course but in fact there were the two courses – and that’s a choice of style, it’s a writing method, a literary form, if you will – a literary instrument – e.g. so when I mention the young 10 year olds, that was only in one course, but I’m referring to “the” course – it’s to illustrate the concepts. It’s the “activism course, generic version” in this sense.

H: Well you touched on something that would tell you it was the SCI1101 course – you gave the age range 10-70?

R: Yes, but I remember that in the first course there was someone fairly old, so in the context of the article, I'd say it's a mix of both.

H: So, just to be clear...

R: It's not one or the other, it's both.

H: Do you then describe the content of both courses?

R: Certain elements of the content of the courses, in the broad sense – one of the points of the article is to explain the importance of activism in education and in society, and this article reflects that – it includes those things. This list that is given in this paragraph says “including” – the goal is not to represent everything – just elements connected to the themes.

H: I think I understand – so what you're saying is that the fact there's very little here that captures the course description, for the purpose of this article it wasn't necessary to include the course description.

R: It's not “the course description”, since there were two courses.

H: You're talking about both courses at this point – the next paragraph is “academic squatting works” – do you mean that you shifted from the 2006 course, left it behind, and went to the 2005 course?

R: No, I'm talking about both.

H: But I thought you said you only squatted the 2005 course?

M: Not what the witness said – said he squatted the process for the 2006 course.

A: That's what I understood.

H: Since we're on this page, subject to some of your comments –  $\frac{3}{4}$  down the page, beginning with “one antidote...for tenured professors to use their tenure” – then, “why not turn tenure on its head – tenure is death, risk is life...” – could you clarify for us?

R: OK, yes (*laughs*) – I see how this could be frightening without knowing the context of this discussion – my criticism of tenure in universities is the following: on the one hand, tenure gives a great protection to professors so that our work can not be interfered with – research, teaching, collegial governance – so there is this legal protection on paper – on the other hand, if one looks at the process as a sociologist, one sees that professors, in order to obtain tenure, must pass through a very grueling process with many steps and many demands – and the

institutional criticism that I make and others make, of course, is that this process creates professionals who have lost the desire to be independent in their research and their teaching – in other words, the process is such that the process is so long and arduous that – we can't cross paths with the Employer at all during that process – it's such that the person never uses tenure once they have it – and this explains why so few professors dare to use their tenure and implement new pedagogical methods or pursue riskier research that have less probability of producing publishable articles and will take a lot of work – needing good student evaluations for promotions, etc. – all that reduces our ability to take risk – so the process that leads to tenure eliminates tenure – eliminates the desire on the part of a professor to really use his tenure – so this is the criticism, I've written a lot about this and so have others – this is one of the criticisms one can make about tenure in the university system – and it's with this knowledge that I wrote this paragraph about tenure – I said “tenure – use it, or lose it” – and this means that we have this great job security, the same as judges, but we have it for a reason – we must do deep research, we must develop new methods, we must be independent thinkers as professionals – so if you don't do that then you lose it in the sense that you have it on paper, but you've lost it in reality – so this paragraph suggests this contradiction and the next sentence is “tenure – use it or lose it” – and this was the meaning of this paragraph. So, I say it in a provocative and very direct manner, as usual, in order to really advance the idea – so you see the first sentence “one antidote to...” – so I could explain this – one of the criticisms of universities is that they train the professional to be obedient beyond professional ethics – as the top priority – this is one of the great criticisms of universities and education – an antidote to this, to prevent this harmful effect, is for professors to genuinely use their professional independence, and their tenure – that's why they have it in the first place – so I explain how to combat deterioration, a kind of systemic fatigue that causes us to forget our responsibilities – it's a paragraph that attempts to describe this, but with a language that challenges people to consider these ideas.

H: Would I be wrong in inferring from these passages that you knew that your engaging in this radical pedagogy was putting your tenure at risk?

R: No, no, no – quite to the contrary – the contrary is true – I said “use it or lose it”, that means, use it to improve society, it’s your responsibility – nothing in that passage says “you will be fired”, because the premise is that you will lose it because it will become meaningless if you do not use it.

H: Could I refer you to the last paragraph of exhibit 13.

R: Ok it's the letter of discipline for grievance G-14. Yes. I haven't read the whole letter, but I read your last paragraph.

H: You recall receiving this on about Nov. 20, 2007 – did you read that paragraph?

R: Yes, I read that paragraph.

H: Did you understand that the university was saying – any further action might lead to further discipline including dismissal?

R: No, I understood the words, but I understood it to be intimidation – exaggeration – in my mind, naive as I was at the time, I took that as using – using a mace to break a hazelnut – they made compliments about my first speaker, Malalai Joya...

H: Don't want to interrupt you but just so you know – you're not answering the question -- I'll follow my usual practice of letting you meander wherever you choose...

R: I'm explaining why I understood what I understood.

H: I'll withdraw my comment.

R: Given that I had done everything right, that I was completely devoted to my work and my responsibilities – apart from what happened later, I never had any complaints, I always had a lot of good feedback from students and colleagues – so when I saw that I found it not to be right – but when I saw the letter, it had not been a long time since Dean Andre Lalonde had started writing to me in English – we had known each other for a very long time – we'd written articles together, I knew his writing style – I was sure he hadn't written this letter – I believe that someone else was “pulling the strings” and it seemed to me to be the administration using the Dean to intimidate me – that's how I interpreted the letter and that sentence at the end. But in my mind, the legal protection of tenure was very solid and this couldn't be right – I took this to be unreasonable to write something in such a way about something so tenuous and so secondary, when I compare it to my reality as I saw it – that's how I understood this letter.

H: So, would it be accurate to say that you disregarded this statement – it didn't affect how you conducted yourself afterwards?

R: No, it affected me a lot, it made me see that the upper administration had decided to interfere in my work, and that there were things it didn't like, or that it didn't like me – I understood that the administration was not happy – but, my opinion was that the statements in this letter and other letters were pretexts, and that the real reasons that they wanted to hound me and intimidate me, were my criticisms of the university on the blog U of O Watch, even if they never told me this, but I figured this could be one of the reasons, and I tried to figure out what could be the reasons – I thought of my radio show, my interviews on TV and on the radio – I mean, I've never been shy to make the comments I felt needed to be said – and I would say that's what I thought was the real reason – I never had proof of it, but that's how I understood it at the time. But, even understanding this, I thought – this is just intimidation, it's not something that's done, firing a well-known and respected professor – there had never been any complaints about my annual reports, no negative comments – talking about firing a tenured professor to me seemed unrealistic.

H: You touched on how it occurred that Dean Lalonde began preparing his communications to you in English – he testified that that was at your request. Do you agree?

R: No, that's not what I heard – I listened very carefully, and I don't think what you said is correct. To the best of my memory, he said the following: "Professor Rancourt most often chose to write to me in English, and out of respect for him I decided to write to him in English" – this is from memory, not exact, but to the best of my memory I never asked him to write to me in English, because I've never done this to anyone – I've always allowed people to write to me in the language they choose and which I understand, and I respond in the language I choose – I've always believed it's the person who writes who chooses the language in a bilingual institution. So I never would have asked such a thing.

H: You've given us your reaction to this statement in Dean Lalonde's letter – Nov. 2007 – similar letter: another disciplinary warning which was subject of Arbitration. Picher's award. Do you recall that?

R: I remember that my union sent me a copy of the decision, yes.

H: Did you note that Mr. Picher upheld a portion of the content of a disciplinary warning to you?

R: I remember there was a part of the discipline that was upheld by the Arbitrator – I remember it was a relatively minor thing – most of the discipline was about my pedagogical method, and this was weighted on my side – I think it had to do with language and the course code, I would like to see a copy of it.

H: We can put it on the screen. 3<sup>rd</sup> page from the back.

D: UO0000653.

A: Are you introducing it?

H: Yes, we'll have the witness identify it.

A: 137.

H: You'll see that reference to your "fine and discerning mind" that I've been referring to a few days back. Mr. Picher's finding that this letter of discipline should stay on your record – did you pay any heed to it going further, similar to placing no weight on the admonition of Dean Lalonde?

R: I never said I put no weight on Dean Lalonde's letter, Mr. Harnden, that's your spin.

H: I'll withdraw that – what about Mr. Picher's decision?

R: Yes, I took that very seriously, I tried to understand how the Arbitrator came to that decision, etc. – I think I understand what the Arbitrator means – so it was really about the fact that when we use official course codes and we associate those with a course description that we must be careful to distinguish the official names – it was a technical point about that – there was a big debate because there were two websites – the university one and a non-official one – so one used the name of the course and one the unofficial practice – so there was a lot of information that led to that decision – I understood that there was that decision.

H: And what did you, if anything, undertake to do about the findings of Mr. Picher?

R: Well, the course was over, the website was no longer relevant and I think it no longer existed – there was nothing special to do. There was no action to take, in my mind – wait a minute – I have a vague memory about an argument with the Employer about this – an exchange between myself, the Employer, and the Union about the content of the website – whether it was before, after, or during, I don't remember.

H: Just to help you understand where we're going with – there was a finding by Arbitrator Picher that you should have a note of discipline on your file?

R: Well I certainly didn't ignore it – I took it very seriously, this perturbed me, this aspect of the Arbitrator's award, so I gave it attention – but for me, it was not an error of a behaviour but of the process, wherein there was a description on one website that was not the same on another website, and the university complained about that because the unofficial one did not conform exactly to the official one – so to me, it wasn't a question of my not being careful enough, because the students all knew that the website was unofficial. Afterwards I learned that the university was very concerned about what happened on these unofficial websites, so I understood that and respect it. I try to be careful with these kinds of circumstances. There was no evidence presented that there was a single student or a single person who was under the impression that the course would be different than it was – there's no evidence that could have created a confusion. I respect that.

H: Thank you, but my question was: did you discern anything from the award that said "I will conduct myself in a different manner following the award" – Mr. Picher found that you issued "misleading" material – did you understand?

R: Yes, I read those words.

H: Did you decide to be more honest, going forward?

R: I don't accept the manner that you pose this question – I could make an error, but this doesn't mean I'm dishonest – I resolved to be more careful regarding non-official descriptions of courses which had an official description as well, to make sure no one would

mistakenly read a non-official description and be misdirected, thinking it was the official description – this is in consequence to all of this. But it was a very special situation that is unlikely to happen again, because it was a case in which I made an informal website, with the help of the TA – and we put up an alternative website, and a description to invite the community – I gave a broad sense of the course – and there was a contradiction with the non-official website, while the course code was a francophone code – whereas, I had an agreement with the program director that the course would be bilingual – so I had this agreement, but it could still give rise to a misunderstanding – but on the first day of class, I said to the students – we’re going to do this according to the agreement with the program director, are you in agreement? Etc. – and the agreement was that some of the invited speakers would be Anglophone, etc. – but there was an agreement to have bilingualism with the program director – there was a bilingual practice – the course was managed by the Department of Geography – this was the way a language problem was resolved at some point – I transmitted this to the non-official website – the university put this into its discipline letter, and the Arbitrator found what he found – I respect that there was this problem that the non-official website said “bilingual” whereas the course code was francophone – so I recognize this and I am very careful to correspond the course codes to the language offered – but personally, I don’t know of any students who had problems with this – everyone understood, and I was at least relieved that it didn’t cause any problems for students. I regret this, but I did not see any problems.

H: Did you not discern that what Mr. Picher was referring to was your integrity?

R: Uh, if we could return to the text? He says “nor is the Arbitrator impressed with Prof. Rancourt’s apparent indifference in having stated that “the plan” is to offer the course in English in alternate years, when in fact that is nothing but a hope or intention in the back of Prof. Rancourt’s mind...”?

H: Yes, that whole paragraph (*quotes*) “misrepresentation”, he’s talking about your integrity, you didn’t get that?

R: I understand that if he wanted to talk about my integrity, he would have used that word – but I made every effort possible to explain to graduate students who were in the same class what the structure was, how we would share the same class...

H: You can continue, but this is not my question – did you learn anything from Mr. Picher’s award? Did you learn that he was saying “Mr. Rancourt did not act with honesty or integrity”?

R: No, I didn’t take from this that I was someone dishonest or without integrity – if we take the entirety of the text of the decision, I do not at all take from it that he says I am someone lacking in integrity – what I understand is that I didn’t certain things that he would have liked to hear – I don’t remember anyone asking me “do you admit that you made an



error” – I had no opportunity to admit anything because it didn’t come up – I simply described what I did and that’s that.

H: What about the words “the grievor’s failure to acknowledge he was wrong is a cause for concern....” – did that mean anything to you?

R: It means what it means – I tried to explain myself, and as a result there was this conclusion – that’s how I understand it. I understand the conclusion, and I understand how it can give these results.

H: Did you write a blog about Mr. Picher’s award?

M: Objection.

H: Perhaps the witness could leave, I’ll just comment on where I’m going with this.

*(Witness leaves)*

H: I anticipate – attempting to establish a dismissal for cause – part of our submission to you will be – this individual has a very difficult time acknowledging any wrongdoing – even in the face of an arbitration finding that discipline should be on his file, we will say that he couldn’t acknowledge that he did anything wrong or should conduct himself different – in support of that reading of his evidence, I want to take him to a passage from his blog on Mr. Picher’s ruling, where he says “Professor Rancourt” – he always likes to speak in the 3<sup>rd</sup> party – this builds on the submission that you can’t change this man with discipline – that’s the way he is – he cannot be governed.

M: Today, during the hearing he said “I won the arbitration on every major point – on a minor point, it’s true that discipline was upheld, but on all the major points my position was upheld” – that’s exactly what he said – you don’t need to go there.

A: I’m going to permit the question – if it’s related to something that’s already said, then that’s something more on the same subject. I don’t think it’s unrelated.

M: I think it’s unrelated to something that’s before you, but I understand your...

*(Witness returns)*

H: Dr. Rancourt, this is from your blog, just a simple statement, it says “Prof. Rancourt won the decision on every major point”.

R: Probably, I would appreciate seeing the blog, ideally, but I remember writing a blog about the award.

A: Question was: do you remember having written that?

R: Yes, I wrote that in the context of a blog – wouldn't it be better to have the context, the exhibit.

H: Thank you. We're now 4:17 and moving on to another topic – suggest it's a good time to close.

A: Next day is sometime in June?

M: We have one witness who will be testifying, coming in from California, and we've got to talk about the timing – back a few months ago we'd said we're looking at the 5<sup>th</sup> or 6<sup>th</sup> – I think it's probably unlikely we'll have finished Prof. Rancourt's cross-examination.

Wednesday, June 5, 2013

*(Union examination of witness Philippe Marchand)*

*(Begin at 9:43)*

M: We're just going to take 5 minutes. *(Exit)*.

*(Continue at 9:59)*

A: OK, ready.

H: Oh, sorry sir.

M: As we've agreed to do this out of order, our next witness is Philippe Marchand.

A: Do you want me to sit him over there? *(Points to chair facing arbitrator)*.

H: Either way.

M: Either way.

A: Do you affirm your testimony?

Marchand (P): I affirm solemnly...

A: You just have to affirm.

P: I affirm *(laughs)*.

M: You're a doctoral student at Berkeley?

P: Yes, doing my.... degree.

M: Before going to Berkeley you were at U of O?

P: ...

A: You did your undergrad at UofO?

P: Yes, undergrad and Master's in physics.

M: And who was your supervisor for your master's?

P: Denis Rancourt.

M: I understand that you had responsibilities in at least 2 courses that were taught by Denis Rancourt?

P: Yes.

M: What were your responsibilities – start with 1722.

P: Yes in 1722 I had a contract for 10 hours per week – my principle roles were to correct homework, exercise that were handed in once per week – with the other TA's we separated the discussion periods – one hour per week, I believe – we responded to the students' questions, showed the techniques – these were the two principle responsibilities – I also had office hours.

A: Maybe in your classes your students don't have difficulty taking notes, but here you have to speak slowly so that I can take notes. The microphone makes it difficult because the sound is coming from both directions. OK, so I heard that you correct homework, you lead discussions, was this with students in class or outside?

P: In class – we had discussions but we also presented the answers to questions. We were also available outside of class to respond to students by email or during our office hours.

M: OK, and regarding the 2008 physics course on Solid State, what were your general responsibilities.

P: OK – for this one it was a half contract – 5 hours per week – I had to be present in the course, to meet the professor, Denis – Denis often asked me for help giving feedback on the problems he presented in class, help preparing questions for the course – I was also available to answer questions from students – but I didn't do any corrections in that course. And twice – once I helped teach with Denis, one of the classes, and another time I presented in class my Master's research, which was relevant to that course. So twice I gave classes in this course.

M: So what was the subject of your Master's?

P: It was a model of the formation of certain types of crystals – ferrous oxides – it was kind of – there was a phase change from the aqueous to solid phase – it was something we in fact talked about in the solid state course – so modeling ferrous oxides.

M: When the subject of rust came up – did your research touch on the general subject of rust?

P: Yes – ferrous oxides – you could say my research was about rust in mud (*laughs*). In fact many people in Denis's group studied ferrous oxides, it was more or less the major topic.

M: So, I would like to start with the discussion at the starting point of the course – what did you understand Professor Rancourt to say about what he would give as material in the class?

A: That's the Solid State course?

P: The first class...

A: This is 1722?

P: No, 5100, I think.

M: We mean the first session.

P: Ah yes, the first session. 5100, it was undergrad/grad. So it was Solid State physics – in the first session of class – if I remember well, the professor asked the students at first, what material had they seen in the previous course, Solid State 1 – so we made the list of those subjects – he also asked what textbook they had used – next, we made a list of subjects that would be of interest to the students for the course Solid State 2 which had not been covered in the first course. I believe those subjects were the ones on which we spent most time – magnetism was the most covered, and it was not covered in the first course – also superconductivity was very interesting for students, and materials physics, e.g. expansion properties of materials – but before all that, before magnetism, the first subject brought up by the professor was to really go to the basics of the interactions between atoms, inter-atomic interactions, how atoms repel or attract each other – what that is – it's fundamental and relates to crystal structure – everything else really depends on this basic idea – so it was fundamental to what was presented later in the course.

M: Did Professor Rancourt talk about his pedagogical approach?

P: Um, yes.

M: So what did he say?

P: Related to his pedagogical method? Do you mean in general?

M: Yes, in general.

P: OK, I'll say what I can, it won't be exhaustive but – he really established a collaborative atmosphere – students could express what they wanted to do – a more participatory format – to decide what the professor would put the emphasis on – also, he had an approach that was very – to begin with simple problems and increase the complexity – something more like what Socrates would do – to discover the principles by doing their own fundamental calculations – so that was the pedagogical approach – did you want to get to evaluation?

M: We'll get there. Speaking about the nature of the evaluation, what did Professor Rancourt say about the way he foresaw evaluating the students?

P: Again, I'll speak to what I remember best – I remember that the professor said that in his opinion, the goal of evaluation was – if we talk about pedagogy – to use a method from which students would get the most out of the course – so his pedagogical method, it was clear, was not to classification of students from best to worst – in English, the word that he said exactly was, I believe, was “rank-order students” – so not to arrange the students from best to worst but to do an individualized evaluation – I'm putting this in my own words, but that's what I really took from it – my understanding was that Professor Rancourt's approach was more individualized. So, in that sense, each student could have an A – there are courses where there is a curve and some will have an A and some a B, and you have to be in the first quartile to have an A – in this course, no – the professor was convinced that everyone was capable of getting the highest mark because it was not a competition with the other students.

M: Um, you may know that the University's allegation is that Professor Rancourt promised students an A+ no matter what work they completed – did you hear anything like that from Professor Rancourt?

P: No, I never understood that there would be a guarantee of an A+ in this course – and if a student had asked at that point “will I have a guaranteed A?”, I would have said “no”.

A: Now is that a supposition that you are making?

P: Yes it's a supposition – I mean that I never understood there was a guarantee, and I would have communicated that to students.

A: It's an example of your comprehension of what Mr. Rancourt said.

P: Yes, exactly.

M: And you would have said that because you had a responsibility as an employee in that class.

P; Yes.

M: Was there any student who said “is it correct, that I understand that I will get an A+ in this course?”

P: No – I'm just saying that from my point of view there was no guarantee.

M: You mentioned that there was a discussion in the class after Prof. Rancourt said that everyone could have an A or A+, what was the nature of that discussion?

P: Well, the debate was more or less on the subject I brought up – was the goal of the evaluation of the course – again, I’m giving my interpretation of the debate – was the goal of the evaluation to help students learn, or to give information about which students were the best or the worst – I’m not saying that these two...

A: Just a second – this was what happened in class?

P: It’s my interpretation – Prof. Rancourt, in his opinion, his role as professor was not to classify students from best to worst – “rank-order students” – but there were some students who said “no, we do want to have marks that will say who was the best in the class, who will win scholarships, who will get a job” – so some students wanted that comparison – some students said that for themselves, the goal of an evaluation was to compare people so that, at the end of the day, when they applied for a job or for graduate school, when someone read their transcript they would say “OK, this student was one of the best” – so they were not in favour of the evaluation method proposed by Denis Rancourt. The point of view of the professor was that his primary role was pedagogical and that for him, the pedagogical goals would be better served by his method.

M: So, during the development of the course, did you observe that there were, let’s say, difficulties with some students regarding the role that they played in the course?

A: Excuse me, your question was – “were there difficulties with some students”?

M: Yes, regarding the role they played in the course.

P: Um, I think that there were – I think the professor mentioned to the entire class at one point that, something that was a bit disappointing was that when some students didn’t take the course very seriously, and it was a very small minority – when the professor mentioned that there were at least 2 students, well maybe just 2 students, who were doing cross-words during class, that that showed a lack of respect towards the other students – there were times when some students didn’t take the class seriously and that distracted other students – I think this was the only time when the professor had to intervene in class. And there was also the occasion about which we spoke, about the subject of rust – when some students – it is very vague in my mind, but I think some students mocked the idea of discussing rust in a course on Solid State physics – I’ve taught a few times now at Berkeley, and in each course there are students who are on their laptop, on Facebook, on the telephone, but as long as they don’t distract others or the professor, it’s not serious.

M: While this class was being taught, were you aware of the homework that formed part of the required work of the students.

P: So you mean the work they had to do outside of class?

M: Yes.

P: Yes, I still have the emails – the professor sent emails about each week giving a summary of what happened in class and telling students what readings they had to do before each course, what problems would be discussed in class.

M: I would like to – would it be possible to pull up a document – on the screen you will see – so do you recognize this document?

P: Yes it's...

A: Just a second... OK, we're at 138.

M: So if we look at the first page, for example, it's an email of January 10, 2008, and I see that what is written is...

A: Just a second, I am renaming it.

M: Ah. So, what I see is that...

H: Sorry Mr. McGee, I was just waiting for the mechanics of getting the exhibit entered – is there a number?

A: 138.

H: I'm not objecting to this evidence but I just want to say we're getting perilously close to an area we have agreed is not part of the proceedings – I think it's a bit artificial to not tell the arbitrator things about the content of the course, but we have agreed with the arbitrator...

M: This will be very short, I don't intend to do it in much detail at all.

H: I intend to pursue it in some detail, and I'll note that earlier in the proceedings we wouldn't have gone here, I think the Arbitrator should be aware of that.

M: So, 4<sup>th</sup> paragraph, there was a final exam?

P: Yes, the final exam was a take-home.

A: Final exam was a...?

P: Take-home in English, a "house exam" in French, I think – it means that the students do the exam at home and it counts as a final exam.

M: Let's go to page 9 – so before we talk about the take-home exam, look at section 2 "juvenile behaviour in class" and it makes reference to 2 students in class who were doing crosswords – is this what you were talking about?



P: Yes, that's it.

M: OK, going to the take-home exam.

P: I think there was another email with more detail.

M: Yes, we'll get to that. So, it reads "the take-home exam – can be done with me..." was this your understanding?

P: Yes, but I wasn't involved in the preparation or evaluation of the exam.

A: My computer is not responding quickly (*pause for computer*). What did you say?

P: I didn't participate myself in the preparation or evaluation of the exam – as I said, I didn't do corrections in this course.

M: Let's talk about high marks. In a class of this advanced level or at a master's or doctoral level, is it normal or abnormal to have high marks in a course like that in your opinion?

P: I can give a fairly quantitative response.

M: You are a scientist, so...

P: At the UofO, an A+ is worth 10, an A worth 9, etc. – I consulted my marks transcript – as a student I had four courses at the 4000 or 5000 level (so 4<sup>th</sup> year or master's) where the average of the group was higher than 9, and the highest was a General Relativity course where there were about 20 students, and the average was 9.8 – 9.8 means at least 80% of the class at A+. The other courses were smaller courses, where the mark was 9-9.5. So that means that many had A+.

A: How many students in those classes?

P: About 10 I would say.

A: And the average was 9.5?

P: Between 9 and 9.5.

M: OK, so before going to cross-examination, shall we take a break?

H: Mr. Marchand, I will be posing my questions in English – if there's any difficulty having them translated, we can do that. I apologize, I wish I could ask them in French. Mr. Marchand, I understand that while you were a student at the UofO, you had frequent contact with Prof. Rancourt?

P: Yes, he was my supervisor for my master's – I also did a summer project with him and continued that for my master's.

H: Was that work in the lab paid work?

P: Yes – during the two summers, I received a scholarship from the NSERC, the government, and I had a supplement that was paid by the professor. During my master's, I was paid by a government scholarship from NSERC again, but I did not receive a salary for research from the university. I received payment as a teaching assistant, but not as a research assistant. That's just to clarify – you either get money from the government or the university.

H: And I take it when you were a teaching assistant in his courses, you were paid for that as well?

P: Yes, I don't know the amount, but.

H: That's fine – so, in general, would it be accurate to say he was very supportive of you during your academic career at the UofO?

P: Yes – Denis was a good mentor at the UofO, I was very satisfied with his supervision during my master's.

H: To put it another way, you regard yourself as being quite indebted to him for that support?

P: No, I think – no, I don't think I owe Denis anything at this point. I believe – I mean, he paid for some of my studies at the university, but I don't believe that means I owe him anything now – I know the word in English, I'm grateful, but I don't have a feeling of debt.

H: That's fine. Now it's well known that Dr. Rancourt described himself as an "activist", an activist professor, I take it you're aware of that?

P: Oh, yes, it's a question? (*laughs*). Yes.

H: And you were a part of the activist community at UofO?

P: Yes, I was very involved in my student association as a master's student on questions such as tuition fees – not necessarily anything to do with Denis, except that I was involved in student causes.

H: Would you on occasion have discussions with Dr. Rancourt regarding activist, let's call them "projects"?

P: What was the last word?

H: Activist projects, strategies, let's call them "projects".

P: Yes, sometimes I talked about my activist work and he gave his opinion – I was happy to have his input even if we didn't always agree – we had good discussions.

H: Were there instances where you were involved in group discussions with Dr. Rancourt and other students regarding activist issues?

P: Yes.

H: And would it be accurate to say that the students in such groups looked to Dr. Rancourt as something of a leader? Would that be accurate?

P: No – leader, I don't think so. I wouldn't qualify that Dr. Rancourt as a leader of student movements on campus. The student movements were lead by students. But, for example, Dr. Rancourt's Science and Society course, which was also known as the Activism Course – I'd say Dr. Rancourt created forums that allowed students to organize – he could have been a facilitator but not a leader.

H: Understood. Now in these forums and these discussions, would Dr. Rancourt assist the students by suggesting strategies to advance their activist agenda?

P: Um, I think that – yes, I remember and can say with certainty that he gave comments and his opinions on certain strategies. I'm talking about informal discussions, not what happened in courses – it's understood here that I'm talking about discussions with a professor outside of class – yes, Denis Rancourt was comfortable giving his opinion on students' strategy or form of organization. And the students could do what they wished with those comments. Yes, Prof. Rancourt was at ease having those discussions with students within different fora such as Cinema Politica, which he organized.

H: Now you mentioned that you had some one-on-one discussions with Dr. Rancourt regarding activist matters. Did you have email exchanges as well?

P: I'm sure there would have been email exchanges.

H: And in those email exchanges you, I suppose, debate activist issues between you? You mentioned you didn't always agree with his ideas?

P: Of course, I think there was a lot more debate in person, but I had emails with people, not just with Denis, but on the email list on which we were both members.

H: And, can you recall – my understanding is that Dr. Rancourt had a university email account and a personal account. For the activist exchanges would he use his university account?

P: I'm sure there were exchanges with the Gmail account, but I can't say for sure that that was the only account – I would have to look in my email.

A: So I understood you to say “there were certainly some on the Gmail account, there could have been some on the university account but you're not sure?”

P: No I'm not sure, I'd have to check.

H: That's fully understandable that you can't recall from memory, but you could of course ascertain that by searching your email history?

P: Yes, I could do that.

H: And, would it be possible to do so perhaps during the break or at lunch time – go through your email and pull up some of those exchanges for us?

P: Yes, if I have access to a computer and internet.

H: That would be appreciated, and could you pull up not only exchanges between Dr. Rancourt and yourself, but also emails from forums that you mentioned, and we no what you're talking about.

M: Objection: the University doesn't get to pull up anything...

H: Could we just ask the witness to leave? You're not doing anything wrong, this is just a lawyers' exchange.

M: So, what I hear is being asked is “can you just pull up all the discussions you had with Dr. Rancourt about anything – issues on campus, about activism – let's just pull up all of that”, and the university doesn't get to do that – certainly not at this stage of the process – if there's a question about a matter that's been put in issue that is “did you have a discussion about the rap singer”, -- we have to be careful about all of this – the fact that there was a discussion about an activist issue does not make it relevant.

H: Two issues; 1) I asked Dr. Rancourt if there were emails on the Gmail account and he said “no, no there's nothing there” – so I'd like to determine if there are emails on his Gmail account that relate to the subject of activist activities on campus – those activities come up in many ways. First of all, the association is alleging bad faith on the part of the university, that when it barred him from his lab, it exhibited bad faith. The university had concerns about what his followers might have done in that lab – we think those exchanges, which he hasn't produced, but which this gentleman might have – will show we acted in good faith, with reasonable concern. 2) Here we have an opportunity to see if there was material that pertained to the activist activities and whether or not there was a risk that something Dr. Rancourt said to his followers may have encouraged them to do something in his lab or otherwise. The other issue is that we've listed in Dr. Rancourt's cross-examination, instances in

which he has encouraged, from our perspective, violence as a form of activist activity – we would like to see if these emails touch on this, and we say we have a right to do so. Any professor who wants to teach again is a model to students, and one of the things that you will have to consider is whether this gentleman is a model to students. So it's a broad request, but given that there are email exchanges on this Gmail account relevant to activist activities – this makes it relevant for this proceeding – I would say that the association can make it's objection after seeing the emails – no different from the “arguably relevant” point of document production earlier in the proceeding – we now have a witness sitting here, no reason he shouldn't produce arguably relevant documents.

M: I'll start with point 2 first – if the question was “have you ever had a discussion with Dr. Rancourt about violence and activism”, we would not have objected – if the question was “do you have any questions which relate to bad faith”, we would not have objected – want to make that clear – what we are objecting to is, first of all, the idea that professor Rancourt has produced nothing – we have produced thousands of documents to the university – I have done a review of all the documents during the relevant period and produced, I'm quite comfortable saying thousands of documents – and I advise the university that there are many more but they fall outside the time period – so we produced a huge amount. What professor Rancourt said is “I don't have any of this kind of email on my Gmail account” – so in terms of production, that's what he said. The question for the witness isn't – a witness is not required to do general disclosure of emails – what this witness said is “there certainly would have been some discussions about activist issues while I was with the university” – he talked about the lists that would have been available, but it's not the general approach in an arbitration that the Employer gets to ask the witness for everything he has in order to find something that might be relevant – if the university wants to ask something specific – I want to back up – the university has never said that a discussion about activism or activist issues is a ground for termination or reinstatement – if the university said that, it would make headlines across the country – the university will never say that to you – what it will say is that there are certain kinds of discussion that are unacceptable, e.g. “counselling violence” – we will say that he did the exact opposite of this, but the university will say otherwise and this will be squarely before you – but “advocating social change” is not something that's before you and will never be before you as part of a request that you do not reinstate, because that it is what professors do and the university will never bring that before you. What they will do is ask, did he cross the line somewhere? Those are our representations.

H: Let me just say, I didn't want to cast doubt on the association's producing emails, just talking about Dr. Rancourt.

A: I would permit the production from the perspective that questions were asked to Mr. Rancourt in relation to whether he had emails in his personal account and the university account – and the university has points about why the lab was closed, in relation to violence, which is what I understand from the university. So I'm going to ask the witness to produce the emails that are personal, from the personal account of Mr. Rancourt and the

university account of Mr. Rancourt – but what is relevant is the violence issue – not all the issues – mind you, I don’t know what is in his computer, nor can I decide if they are related to violence or not – and related to violence can be very wide in its meaning, and I refer to Mr. Rancourt’s testimony about his definition of activism and the, I would say “common” definition of activism as it is seen in the public – if there are emails, and these emails are related to violence – I will ask the witness to produce emails, maybe there are 2, 3, 50 emails – I’ll ask counsel to discuss between themselves whether or not they’re related to the violence aspect and if you don’t agree you’ll have to ask me to decide. I agree with you, Mr. McGee, that the emails should be restricted to the violence aspect, and I think the ruling agrees with you, Mr. Harnden, regarding the university shutting down the lab and the university having concerns about violence in relation to that.

H: We’re at morning break – I’ll continue cross-exam on other issues and we’ll deal with emails at lunch. I’d like you to instruct the witness about his duties.

A: Until your testimony has finished, during the pause, as a witness you cannot talk about the content of your testimony to anyone – you can talk about the weather, a trip, but not about the process.

M: I had a question, before the break – will it take about 2 minutes to look for exchanges on your email account, or will it take longer?

P: It depends on how precise the question is – if it’s about activism and from Denis, that’s OK, but if it’s about courses, etc -- there are many, I’m sure how many came from Denis Rancourt.

M: To start, if possible, do this exercise and download these emails into a file – I’ll ask the question will this take 5 minutes, a half-hour, or what?

P: It’ll take me a bit of time. Can I ask a question? What if it is something not related to the case?

A: No, you have to produce anything you received from Dr. Rancourt.

P: I just want to make sure that the University will not obtain information about me that it could use at a later date, given that I was involved in activism as a student.

A: I’m not a Royal Commission here, I can’t guarantee immunity.

H: I can give the witness an assurance, we’re not using this exercise to harm your interest in anyway.

P: I was at the university 5 years and I just want to make sure...

H: No, that wouldn’t be right, it’s purely for the purposes of this proceeding.

A: OK, we're taking our morning break.

*(Return at 11:45)*

H: You had a key to the laboratory?

P: Yes.

H: Do you know who else had a key?

P: Yes – there were other students, there was a research associate – when I was an undergraduate, there were other undergraduates there who had keys – but there was 2 labs – there was the Mossbauer lab – I was in the other one – it was just desks, because I had nothing to do with the Mossbauer.

H: Thank you, so I should clarify – I was interested in who had access to the Mossbauer laboratory – the one that was ultimately closed, if you recall that.

P: I think the students who were in the research group – I'm not 100% sure, but I think we had keys for both labs. I could name some people, it changed over time – I'm trying to know, do you want a list of names?

H: Could you give us the approximate number to your knowledge of people who had access?

P: When I was there in 2005, in the summer, as an undergraduate student, it was a larger group – if we count professors, post-docs, students, there were maybe about 15 people – at the end of my master's, we were maybe 4 master's students and 2 or 3 doctoral students, so 7 plus a post-doctoral researcher, plus Denis Rancourt – 4 researchers worked on the Mossbauer side, and 4 on my side, where there were only desks – but I think, and not 100% sure, that we had keys for both sides.

A: So these people had keys for both labs?

P: There were at least 4 who had keys for the Mossbauer and I think we had keys for both – I must say, that I don't remember if I had keys for both – at Berkeley I had two keys, it's been too long to really say – the only sure thing I can say is that there were 4 who had access to the Mossbauer.

H: That's fair, we'll move on to something other than your knowledge about who had access. Do you know the student Phillip Vinten?

P: I know who he is, yes.

A: The name is...

H: Phillip Vinten, he was a witness earlier in the process.

P: I could recognize him, but I don't know if I've ever spoken to him.

H: He was a student in 5100, right?

P: Yes.

H: Maybe you don't know this, but were you aware he was one of the stronger students at the university, did he have that reputation?

P: Yes, I learned, I'm not sure how, but I think I heard that he had the highest average in the department.

H: I'm going to refer the witness to exhibit 2, if we could pull that up. I'll tell you the passages we'll refer to. Now you told us earlier this morning about your recollection about what was said at the first class in the 4385/5100 class, and you'll see in this email that Mr. Vinten gives his recollections, and I just want to give you a chance to comment on them – I'll refer you to that paragraph, beginning in the first class – Mr. Vinten said "Dr. Rancourt told us that everyone in the class would be receiving an A+". Can you tell us if that's an accurate statement?

P: Listen, I maintain what I said earlier today, even if it's not in line with what Mr. Vinten said. That's what I can tell you.

H: Let's approach it from another perspective, Mr. Marchand – you heard what Dr. Rancourt said on that occasion – does it surprise you that a student like Mr. Vinten could have received that impression – that everyone in that class would be receiving an A+?

P: I don't really have a response for that – I'm not surprised but it's because Mr. Vinten also published a letter in MacLean's that mentioned this – but I don't think that's your question. I believe that it's clear that he was in disagreement that everyone could have a high mark – I understand his point of view, but I don't share it. I'm not sure how to – I don't know him personally, I don't know his opinions, except for what I've read.

H: Mr. Marchand, I apologize, my questions must not be clear – we're talking about what Dr. Rancourt said on that occasion – I'm not asking you to comment on Mr. Vinten's viewpoint on this or that strategy, just the words that were used on that occasion – would you agree that it was no surprise, given what you heard, that a student, such as Mr. Vinten could have concluded that everyone in the class could have received an A+?

P: I'm not surprised – I think he's exaggerating – but I'm not surprised given Dr. Rancourt's words – I think it's an exaggeration, but I don't think it's surprising that someone disagreed and interpreted the words in such a way, put the emphasis in certain places and exaggerate certain points.



H: Let's leave it at that and move to the next sentence "He (Dr. Rancourt) explained his teaching method and said there would be less stress on us to learn" – do you remember that in is that accurate regarding what Dr. Rancourt said?

P: Somewhat, yes, I think he removed the reference to "competition" – I don't think that's what he intended.

H: I'm not asking you what Dr. Rancourt intended – I'm asking you what Mr. Vinten recalled.

M: Sorry, what exactly are we referring to?

H: Email from Mr. Vinten on Feb. 2, 2008, asking witness about 2<sup>nd</sup> sentence in that passage and does that accord with what witness heard on that occasion.

P: I agree that the professor said that his method would be less stressful for the students, but I think the context of that was by saying – what I mentioned about "rank-order" and "competition" between students for the best mark. The only thing I completely disagree with is the reference to "removing the grade" because it's not exactly true that there would be no mark in this course – in fact, there were marks.

H: Mr. Marchand, you would agree that if you tell students there's no competition between you, there's no competition between students, no?

M: Objection: save it for argument.

H: OK. Now Mr. Vinten says he recalls Dr. Rancourt saying "he does not believe in grades", do you remember that?

P: No, I don't have a direct memory, I only know that Denis Rancourt is critical of conventional evaluation methods and – I think Denis Rancourt would believe that, but I can't confirm with certainty.

H: That's fair. Then Mr. Vinten recalls Dr. Rancourt saying "in no way can we be harmed by the system giving everyone A+ because this is a contract between us and the teacher" – is Mr. Vinten's recollection correct in terms of what was said?

P: Mm – in everything Mr. Vinten says, there is an underlying assumption that there would be a guarantee of A+ -- Dr. Rancourt said that everyone was capable of getting an A+ -- from the professor's point of view it doesn't hurt students if everyone gets a high mark, but this wasn't a guarantee. Now, this was a position that could be debated.

H: What about the concept of there being a contract between the professors and the students – do you remember Dr. Rancourt mentioning this concept of a contract?

P: I don't remember, I don't have a clear memory of a discussion of a contract.

H: That's quite understandable, we're in 2013, Mr. Vinten was writing in 2008, I can understand that, it's not a fair comparison. Do you remember words to the effect of the marks being "taken away".

P: No, I don't remember that – I think in the first course – I think there was a discussion, not in the first course but later, about the administration potentially "taking away" marks.

H: Thank you, Mr. Marchand, I want to now turn to Dr. Rancourt's statements about what was said on that occasion. So I'll refer the witness to exhibit 136, beginning at page 6 and over to pg. 7 – just so you understand, Mr. Marchand, this is a transcript of an interview with a reporter down in Kingston, where Dr. Rancourt spoke about this very subject about what was discussed on the first day of class. And...

M: I think we've established this is a transcript, right?

H: A record taken of the interview, and I haven't yet taken Dr. Rancourt through this, and if Dr. Rancourt chooses to say anything about this he may do so.

M: It's just the choice of word "transcript".

H: OK. So, you see at the bottom the words "Yeah, I don't grade". Let's start with the context "you mentioned you don't grade, even though...." then "Yeah, I refuse to grade, I still don't grade, I automatically give everyone the top grade on the first day of the course... I explain why, and yeah I still do that and they will have to take me to court to take that away" – so that's the full passage, and my question to you is, the description of what occurs on the 1<sup>st</sup> day of class, that Dr. Rancourt is giving in this interview, does that accord with what you heard on the first day of class on 4385/5100, and I'll take you through that...

M: Before we do that, there's clarification – this transcript was not after 4385 but before 4385, I think I should clarify that.

H: Just take a moment to check the...

*(Witness leaves)*

M: To help you, I think – my understanding was this was a discussion that happened in October 2007.

H: I think you're right, I'm just checking on Dr. Rancourt's CV. I think we should let the witness get lunch, I know that when I get hungry I'm not at my best.

M: We said 12:15 and it's now 12:12.

A: What time do you want to come back, given that the witness will have to check his emails?

*(Witness returns)*

A: OK, so we're adjourning for lunch until 1:45 – you'll be able to access your emails. You may not discuss anything about your testimony.

P: What exactly am I searching for?

A: Emails from Dr. Rancourt.

P: Everything?

A: Except for what might be personal.

P: I think that's too much.

A: What period are we zooming in on?

H: 2005-2008. I'm also interested if there are exchanges on the RBC bombing, for example, which is post-dismissal.

P: No, there's nothing.

M: The answer's no. So 2005-2008.

A: You will give this emails to the Union's lawyer, who will transfer them to the University – I don't think that will be a problem?

H: Absolutely not.

M: We'll sit down and go through it – I think the best way is to create a file on the desktop – we can look at it, and that way transfer it.

P: OK, I'll do my best using Gmail.

M: Thank you.

A: Don't forget to eat.

*(Resume at 2:55, discussing 1500 emails from Marchand's Gmail account)*

M: I give my affirmation as a lawyer that we will not look at anything besides what you have put in the folder about this grievance in your Gmail account.

P: OK, so I will leave it open then.

*(Adjourn for the day so that University and Union can go over Marchand emails)*

Thursday, June 6, 2013

*(Continuation of University cross-examination of witness Philippe Marchand)*

*(Begin at 9:36)*

H: Not sure how you want to proceed – we could go document by document?

M: That's fine.

H: Because it's quite a lengthy exchange of emails, I think it's better to let the witness review it to have the context, otherwise he'll be scrolling through. I'll just hand you a paper copy, Mr. McGee.

M: So I've renamed that – instead of 28-4 it should be 26-4.

H: Mr. Marchand, I want you to know how this is arranged – first at end, last at beginning.

P: Just a question – I could talk a lot about all of this.

H: Just respond to my questions. Are you all set? I'll go to the last email, which is from Dr. Rancourt, dated April 26...

A: Now you're talking about the last email – I've downloaded them as they are, but since it's number 26, this might correspond with numbers of exhibits already filed – just give me the date so I can find it – if you're referring to "last on the list" I might not know what that is.

H: It's the email of April 26, 2008.

M: We're referring to the last email in that document.

H: That's where I wasn't making myself clear, I'm sorry.

A: Am I at pg. 6 of the document?

M: No, you're at pg. 1 of the document.

H: You go to the 3<sup>rd</sup> page, at the end of the electronic document – there are a number of exchanges on April 26 so it gets confusing – this one doesn't have the time on it, but it clearly preceded all the rest.

M: So it's the 1<sup>st</sup> email in chronological order, the last email in the document.

H: Correct.

A: It's the first...

H: It starts "please consider this" – it's actually a 6 page paper copy of the document, so it's a ways in.

A: Yes.

H: Mr. Marchand, could you first assist us by confirming that there was a student rally on campus that lead to this email exchange.

P: Yes.

H: I'll just take a moment (*consults technician about translation*). And can you confirm that you received this email from Dr. Rancourt on April 26, 2008?

P: Yes.

H: And was it your understanding that Dr. Rancourt was giving you and the other students his advice on strategy?

P: Um, yes well, comments on – it's more about what happened during the protest – he gave some ideas for the following steps.

H: Now, can you assist us by telling us who was copied on this email? We know you were, but we can't tell who else would have received this?

P: Something that I could easily confirm in my email – I believe it was a list of emails – what I know in general is that that whole email string was about a protest against a Code of Conduct that the administration wanted to implement.

A: About...

P: It was about a Code of Conduct the University wanted to impose in 2008, and there were meetings with a group of students, some of whom, like me, were part of the student associations – the SFUO, which, just to clarify, is the association of undergrad students, and GSAED is the association of graduate students – at that time I was one of the representatives at the GSAED.

A: How do you spell GSAED?

P: G-S-A-E-D – graduate students' association, association des étudiant(e)s diplômé(e)s – so in the context, the email was the email list of the student group, which was a mix of people involved in the student associations and otherwise interested – and Denis Rancourt was also present at those meetings – so it was the committee or group that organized the campaign and the protest against the Code of Conduct.

H: I'll take you to a passage on the next page of your paper copy – paragraph beginning “any discussion or negotiation”.

P: Mm-hmm.

A: “Any, all discussions or negotiations”?

H: Yes, and my question is in relation to the last sentence “we need not have consensus and we need to break with those who see negotiation as the way to get the best possible deal”. What did you understand from that comment by Prof. Rancourt?

P: Um, I believe at that point, honestly, especially looking at the context of this email exchange, there were some people in this group – not only Denis Rancourt, but also others in the group – who thought that the SFUO and GSAED student representatives wanted to make compromises about the Code of Conduct, because their language was along the lines of “discussion” with the administration – so I think the comment comes from that perspective.

H: Thank you, and could you move to the next paragraph, please, and the last two sentences – three sentences – “victory lies in escalating force in this case – nor do we want to use civil disobedience – let's use force and win” – what did you understand from this?

P: Well, we had a protest involving hundreds of people – this was very rare at the UofO at this time – after this, there was no action planned – it seemed, I think, that the student associations were going to meet the administration following this protest, and I think that the message – again, it wasn't only Denis Rancourt saying this – it was to incite the student representatives to not negotiate, but to organize other actions that would be more troublesome for the University than a simple protest, and in the sense of “force”, I think it means – we're not talking about violence against an individual here, and for example, this is only my impression, for example, students could have occupied the office of an administrative employee – this would have been an example of an escalation of the action that would have been nonviolent but would have bothered the University – and this was one of the examples of what was meant by “direct action”.

H: Well on the subject of direct action, could you move further down on the page to the “P.S.” which begins “P.S. on direct action”?

P: Mm-hmm.

H: And I'll just take a moment for people to read through the whole of that paragraph before I ask you a question on that. First of all, could you clarify for those who may not be familiar with the campus, where Dr. Rancourt refers to “a joyous bonfire on Tabaret lawn” – what is Tabaret?

P: Tabaret is the principal administration building on Waller and Laurier – there's a lawn which is, maybe, the largest green space on campus.

H: And, when he says "a body pushed against the 2<sup>nd</sup> floor glass doors" – what was your understanding of what doors he was talking about?

P: If we go into Tabaret, there is a Rotunda, and stairs that turn around the 1<sup>st</sup> floor and arrive at the 2<sup>nd</sup> floor. The administration offices on the 2<sup>nd</sup> floor are blocked from access from the stairs by glass doors – they were locked, but were not typically locked, but they were blocked at the time of this protest.

H: And when he says "... on Patry's door" who was Patry?

P: Patry was the former President of the UofO.

H: Now, you responded to this email and we'll just go to that for a moment – you respond at 11:36 a.m., and we'll wait for everybody to see that.

A: Do I go backwards?

H: Yes, backwards – he begins to correct some of the untruths in Denis's message. At the end you say "please take me off this mailing list". Why did you make that request?

P: Um, because – I think there's perhaps an explanation in the rest of the email, but by and large I was not satisfied with that plan and with the direction this group was going on, and more and more I had almost finished my Master's at the UofO – it was my last semester and I had decided that I preferred to no longer continue to participate in these discussions or attend the meetings of this group in particular.

H: Could we go further ahead in the email exchange, backward in the document, to your email 4/26/08 beginning "Hi everyone". And the 4<sup>th</sup> paragraph of that email "I do not believe aggressivity and violence are to be condemned in any situation but here's where I draw the line: I do not want to be in a group.... I thought there was a difference between not condemning violence and glorifying it...". Is that your response to Dr. Rancourt's proposed strategy?

P: No, there's a lot of context that's not present in this email exchange. In fact, if I want to speak and respond about Dr. Rancourt, as I did in other emails, I would have written his name explicitly. In fact, this message, which I admit is a bit dramatic and hyperbolic – the goal was, in my opinion, to indicate to the group what I saw as a danger in some of the arguments that were brought forward – so I made a bit of an exaggeration in order to show my point – what I mean is that, for example, when we speak about "our actions are no longer effective if there is more and more confrontation because if we are really making a difference



there will be repression by the police” or “if there is no confrontation, then we’re not effective” – I heard this kind of argument, and what I wanted to say was that I don’t agree with that. I think sometimes, unfortunately, confrontations happen, but I think that in this discourse some suggested that we seek confrontation – and I wanted to say that I did not agree with this kind of argument.

H: Now, as you know you had a detailed exchange with Dr. Rancourt on these issues, but in the interest of time I’ll leave it a later time – another passage, 2<sup>nd</sup> paragraph, you writing to Dr. Rancourt, it begins with you saying “Hello Denis, by losing”. I’ll just wait till people find that email.

A: Do I go to the end of the document?

H: It’s at the beginning – one email then another one. 3<sup>rd</sup> paragraph that begins “maybe that is a harsh criticism of the group”. Referring to your words, Dr. Marchand “feel like a cult” then you cite some behaviours of Dr. Rancourt – clarify what you meant when you said you felt like you were in a cult?

P: What I meant, simply, was that – when I speak about ideological purity – I felt uncomfortable with the idea that there were many attacks or very severe critiques against members of the group because they were less conscious about the administration.

A: Less conscious... you mean they agreed?

P: No – there was the type of person that wanted to have discussions with the administration, and there was a reaction against these people, which seemed to come from the majority of the group – so it’s not just about Denis Rancourt – it seemed to me that the majority of the group was too severe against these people who seemed to not want to “toe the party line” – these people were friends, we had worked together, so it concerned me that the ideological aspect became more important than the community aspect, if you like. So to give the metaphor of a cult, it was in that sense.

H: And you give two examples – one of them, you say “you and Samantha”, the “you” is Dr. Rancourt?

P: Yes.

H: “When you and Samantha attacked Danika” – why did that make you feel like you were part of a cult?

P: The student federation had written a letter to the administration with precise demands of which the first was to reject the Code of Conduct and, as I said earlier, because at the end of that letter it was indicated that “we would remain in discussion” – I’m not sure if that was the exact language, but something like that – there was a reaction in the group

that was, in my opinion, exaggerated, that said that was taking the discussion towards a compromise. And in particular, Danika, who was still a very good friend, was the only representative from the student federation at that time, so all the criticism was directed towards that person – in my opinion it was almost – there was a troubling aspect for me because I was concerned about the conflict – that there was almost as much internal conflict within the group as towards the administration. Additionally, these were close friends who were being criticized, unjustly in my opinion. So I had a very emotional reaction and I left that meeting. So it's certain that I had an emotional reaction, and I don't deny that what I wrote was under the influence of that anger.

H: Could I confirm, sir, this is exhibit 139?

M: In marking exhibits, we've had a discussion yesterday in terms of the fact that there may or may not be some exhibits that come out of the search yesterday that are used, and there may be objections – we don't want to fact that we're going to agree to accept a document that there's an agreement to any character of the document – in order to expedite matters, we don't have any objection.

A: OK, 139?

H: That was my list. We're moving to the document dated August 16, 2007.

A: Which date in August?

M: The document in your list would be 8-16-07.

H: It begins with "I agree with Severin".

A: Is that document entered into evidence?

H: Yes.

A: So I'm going to give it a number right away – 140.

H: I'll give a paper copy to the witness – I'll be referring to the very first exchange. So Mr. Marchand, while I've given you a fairly lengthy document of email exchanges, you can review it if you want, for context – I'll be asking you about the exchange between Mr. Stojanovic and Dr. Rancourt. Now we have the email from Mr. Stojanovic, can you confirm he was a student at UofO at that time?

P: Yes.

H: You see the content of the email which ends with "burn something". What was the context of Mr. Stojanovic sending this email?

P: Honestly, I don't think I was implicated in that conversation – I was in Cc, but I honestly.

H: That's fine, if you don't remember the context.

P: It's an email I archived – a long email – I can say the context, why I received this email – Severin was implicated in a complaint, I think, where there was a conflict with the university and I also had a separate complaint, and we kept each other informed about our complaints and respective conflicts. But, apart from that, I can't really help you interpret these emails, because I did not participate.

H: That's fine. Could you help us this way – we're looking at Cc's, who is JP Prevost?

P: Another student in physics who, like Severin and I, had problems with having been attacked by the administration, so we supported each other typically.

H: And who was Sean Kelly?

P: Another physics student at that point.

H: And Mireille Gervais?

P: Mireille was, I think, at that time, a student in law – and she also held an important position, Coordinator of the Student Appeal Centre – she helped students with their conflicts with the University administration.

H: Now move to a document dated June 3, 2007. I'll give you a paper copy, sir.

P: It's all this?

A: Exhibit 141.

H: Thank you, sir. And we stated this email from Dr. Rancourt was sent to all kinds of groups in Ottawa – who were the recipients, in general?

P: In general it was students, there was a sub-group, I don't remember the name – of students and community members who were in the Science and Society course in 2006.

H: And, um, we see Dr. Rancourt is thanking Mike for sending a link. He says "that's activism – they're using effective methods proportional to the problem" – let's go to the link, it says "Protestors Trash Premier's Office".

A: Is that the link from...

H: Yes, that's the one. I'm told that is a link, now I'm not sure that is going to show on the screen. The witness has the paper copy, but I'm not sure the Arbitrator can see it.

M: If you look at May 23, 2007.

H: We'll make a separate document, knowing that's the link.

A: I'm looking for?

M: May 23, 2007. It says "M-A-Y 23, 1007".

A: That will be 142.

H: You confirm receiving the email with the link? I appreciate that the article speaks for itself – you can confirm you received this email with the link?

P: Yes, if you have retrieved it from my email that means I received it – I don't remember it.

H: (*Laughs*). OK, that's fine. Now I want to move to a document – October 7, 2008.

A: August 7?

H: October 7, 2008.

A: 143.

H: Now, I won't ask you to explain what you understood by Dr. Rancourt's comments – I'll take that up with him – but if you could give us the context, it says "if they were to give us the slightest complaint that our exchange of information was suspect, then we should hit them hard" – can you explain that?

P: OK, Denis is responding to my using the word "suspect" – after seeing the email, I remember the context – the University, in fact, certain administrators at the university, wanted to use my case as a student to advance the argument that Denis Rancourt was a bad supervisor. And I sent an email to the Chairman of the Department to say "if you are going to use my case, I would like to have the opportunity to speak about it" – to speak to the Departmental Committee about it. The Chairman did not tell me when the committee was going to meet, but I think, I think I remember from this email, getting the date of the meeting of the committee from Denis Rancourt. But I'm not sure if I could use that information to ask the Chairman again about the meeting – or, more precisely, I didn't want to administration to also use the fact that Denis told me the date of the committee meeting against him. So I was, perhaps, very cautious in that sense. But this is the meaning of the email.

H: Thank you for that, we'll turn to an email dated April 18, or a series of emails, beginning "Media links – we need more heat".

A: OK, we're at 144.

M: We're going to object to this one – we're very, very far – is there even any possible argument available to the University – quite frankly, I can't see any in this for admitting this document.

H: In the interest of time, we'll move on to...

A: OK. Just a second, and in the interest of time, I'm going to strike it out. That was April?

H: April 18. And we'll move to May 9, 2006.

M: This is the same objection.

H: I will ask for a ruling on this point, and I'll briefly outline why I think it's relevant that you have the document on screen – there's a title "Activism Course has been normalized into a pile of the usual crap" – there's a paragraph, Dr. Rancourt says "I just don't know what to do about these colleagues of mine – to me this is an opportunity for activist students to become more militant". In our view this is another example – and invitation for students to become more militant is an incitement for students to become more militant.

M: (*Audible sigh*). So a professor who tells university students "you should become more militant" is grounds for disallowing a professor to return to his employment in the context of an arbitrator's order at an arbitration – for the University to say "this is new", that they didn't know professor Rancourt was telling students to be militant in 2006 defies belief in the context of Dean Lalonde's testimony. This was known to the University, there's nothing new – and there's nothing here that's an incitement to violence – it's an incitement to become more militant.

H: I would concur with Mr. McGee, but it's a clear theme. I'll take your direction.

A: I would permit the filing of that document in as much as there is some link to the other evidence that has been entered – your argument is in an argument, Mr. McGee, but I think it should be entered. I find it is relevant to the issue without deciding, of course, that issue – just a question of whether that document is admissible. So it will be 144.

H: Mr. Marchand, I know you find this a strange question since we took it from your email, but did you receive this email?

P: Yes.

M: It's stipulated that all these emails were received by Mr. Marchand.

H: OK. And one email, dated July 30, 2008.

A: OK, that will become 145.

H: Mr. Marchand, you see that the email was copied to a number of recipients, but sent to an individual, Claude Haridge. Can you tell us who Mr. Haridge is or was?

P: In my mind, Mr. Haridge was one of the community members present – resident of Ottawa – who attended the Science and Society course in 2006, in the Fall 2006 – there were many “older” people, if you like – many adults from the community – because there were many invited speakers and many people were interested in this – so some of these people stayed involved in certain campaigns to maintain the course, for example.

H: And can you comment specifically what you recall of Mr. Haridge's level of activity?

P: Oh, yes – um, yes – I don't remember exactly about everything, but I think Claude was involved in sending many letters in support of the Science and Society course. He was someone who participated a lot in discussions about the course – no, he was someone who was very likeable, if you will.

H: And was his activity, in terms of your observation, just around this course, or did he pop up at different intervals at different times?

P: Not to my knowledge, but – no, apart from simply seeing him in the street in Ottawa and saying “hi” – no all my interactions were just in the course Science and Society, or in the efforts to maintain this course.

H: That completes this subject area, and it's 10:49.

A: You can proceed. OK, the other documents – are these documents that you plan to introduce in reply evidence, in re-examination?

M: I plan to use only one of them, and it is ... 2008.

A: I have April 27...

M: No, April 22.

A: OK, April 27 I can strike off. Or maybe I can ask the same questions when you have completed your re-examination.

M: That would be easier.

A: I'm not implying that your cross-examination has ended.

H: (*Laughs*). Returning to exhibit 126 – this is where we left off last day. Mr. Marchand, just to help you remember, it was a Q&A, radio interview – we'll take you to that on screen. And it was clarified that this radio interview preceded the course you were talking about, that you were the TA in – so this was in October 2007 and that course was in Winter 2008, just to orient you with respect to time. If you could read through the paragraph beginning “yeah, I still don't grade” – three pages from the end, we did a hand pagination.

A: And we're at paragraph 4?

H: Yes, paragraph beginning “Yeah, I still don't grade” and over to “They'll have to take me to Court to take that away”. It's quite evident from the chronology that Dr. Rancourt is referring to another course, but my question to you is, to what extent is what he's describing here actually different from what occurred on the first day of course in the one you attended?

P: Well, as I said yesterday, my understanding of the first day of class of 4385, there was no guarantee that everyone would receive an A+ -- so I think that the paragraph that we have just read goes definitely further than what I heard in the other course – in particular, I didn't hear that in the course 4385 – I'm talking about the idea of “going to Court” – I never heard that. And also, it's not, when it says “the first thing, and we will not talk about grades beyond this point” – I'm pretty sure there were discussions about evaluation many times during the course – it wasn't at all the case that it was “everyone gets an A+” and we're not going to talk about it anymore. Not at all.

H: Thank you and let's go to paragraph, mid-way down, pg. 8, beginning “(Last question is about”, then about 4 lines down, the record suggests Dr. Rancourt said: “You can walk out of here and still get an A+ -- you can walk out of the room, you have freedom, I'm giving you that power”. To what extent is that different from Dr. Rancourt's course in 4385?

P: It's an interesting comment – what it says, in my opinion ,is, when you have a course and the professor has the power to say whether or not you pass, that influences the students and the students will be less at ease criticizing the professor. So – but I don't remember having that discussion in the physics course. I remember, however, for the course Science and Society, nicknamed the Activism Course, we wanted to – us and the teachers – wanted the course to be S/NS – we wanted the course to be pass/fail – in order to allow the students to be more at ease criticizing the professor, without that making any difference between getting an A, B, or C. And my memory is that when we started that course, between the professor and students – we said “no grades” in my mind that meant “pass/fail” or “satisfactory/non-satisfactory” it wasn't “no grades at all”. I remember this argument, but not in the context of giving an A+ to everybody.

H: Now you described what you recall as to what Dr. Rancourt said at the outset of the 4385/5100 class – and one of your comments referenced that the purpose for him, and of course this is a translation, the purpose for him was not to evaluate students, not to produce a ranking of students from best to worst.

P: Mm-hmm.

H: Did you ever question in your mind why the reference was A+ and why it wasn't to a B or a C – did you understand that?

P: Well – OK, at that point – first, I never thought that everyone would have an A+ guaranteed. So, the question is not – my understanding about rank-order – it's more the debate “do we compare students one to another” or “do we compare students to themselves” – and in my understanding, it was possibility to fail the course – not because they weren't as good as other students, because they didn't do the work. So there was the possibility for students to fail the course. My understanding about the whole idea of removing the competition between students, for me, and it was my interpretation, it didn't mean that everyone would have the same grade. But I don't want to debate that either, I just want to explain my interpretation.

H: Well you agree that at the outset of the class, the only grade that professor Rancourt referred to was A+? We can agree on that?

P: I don't remember – it's very – maybe in the sense of saying – honestly I don't remember – it's possible that it was mentioned that everyone could possibly get an A+ because you will all be evaluated individually, everyone could get the highest mark – that's all I remember, but from my mind, there was no mention of a guarantee that everyone would get an A+. That's really what I can tell you.

H: That's not my question, Mr. Marchand – I'm not asking you whether there was any guarantee – I'm asking you to confirm – you were the TA, you were sitting there in class – did he mention a mark, and was the mark A+?

P: OK, there was a mention of A+, but I can't say from memory that there was not a mention of any other mark.

M: I think the original question was “was A+ the only mark mentioned”. I think that's what the witness was trying to answer, he may have been confused.

A: But you were saying...

H: So, we agree – are you finished, sorry (*laughs*).

P: Yes.

H: OK, so he mentioned A+, what did he say in reference to A+?



P: Um, it's not – I can't say textually – but from my memory and my understanding after that course and up to now, was that everyone could have received an A+ -- contrary to other courses, it was possible for everyone to achieve an A+.

H: It's 11:06, suggest it's time for a break.

A: We're on break for 15 minutes.

*(Morning break)*

H: ...

P: Not only because he said it on the first day of class, but because I was a TA, and I was aware that the pedagogy would be different.

H: Were you a little excited about being part of this new approach to pedagogy?

P: Um, I was interested – and it was also my last semester at the university, so I had my research much more in mind than teaching – but yes, I was enthusiastic to see the result of this pedagogical approach.

H: And in your discussions with Dr. Rancourt before the course began, did he tell you about his experience using this approach with other classes?

P: I was also TA for the course 1722 which Denis Rancourt also taught differently from other sessions – Denis Rancourt taught that course, 1722, for quite a long time, and brought some changes in during the session in which I was a TA – so I had already seen some previous attempts to change the pedagogy – and also, Dr. Rancourt spoke to me about what he found in academic articles – in the pedagogical research, which for him was relevant – I don't remember exactly the content, but he mentioned being inspired by the pedagogical research.

H: In what way was Dr. Rancourt's pedagogy different from the norm in 1722, in your observation.

P: In 1722, OK –

A: One second.

P: I did not attend the course in class – I wasn't at the lectures – but, I was aware that, rather than follow the textbook in a very exact way, it would be more about questions that required more than quick calculations and precise answers – Dr. Rancourt rather posed broad questions that were intended...

A: More complex questions?

P: More open questions – I remember an example – “what happens when an airplane hits the sound barrier” – another question like “why is the sky blue” – very simple questions that, in physics, become very complex. He introduced material which seemed simple but at the end of the day involved many areas of physics and was an, let’s say organic process – that’s not a good word, but basically, instead of artificially following the manual, he would...

H: I don’t want to interrupt, but I thought you said you didn’t attend the lectures?

P: That’s right – the other TA, Nathalie Payette, attended the lectures.

H: You just tell us what you observed, instead of what you heard from others.

M: No, I think the question was “what did you understand about how the pedagogy was different” – witness must be able to talk about that.

H: OK, go ahead, now that we know you’re talking about Nathalie Payette’s information.

P: OK, well I needed to know what was going on in the course, even if I wasn’t there, and spoke to Nathalie.

H: Did you understand from 1722 that Dr. Rancourt had adopted a different approach to grading? And what was your understanding?

P: Yes – the concept was a contract concept – this was something we discussed between the 3 of us – Denis and the 2 TA’s – before the course – so we planned that together, more or less – the idea was that the students, at the beginning of the course, would give information about the kind and amount of work they planned to do in the course, and what mark they felt would be in accordance with that – so students who wanted a very high mark in the course needed to do a lot of work and really succeed, compared to a student who simply wanted to pass the course. And this contract could be revised during the semester, during discussions between the student and professor.

H: Now, did Dr. Rancourt tell you before the 4385/5100 course that he was adopting the same approach that you just described, or was he going to rework the approach?

P: No, it wasn’t the same approach, and I wasn’t involved in the evaluation in 4385 – so, unfortunately for 4385 I can’t say what were the criteria that Denis Rancourt used for the evaluation – I had no role in that for 4385.

H: Mr. Marchand, that wasn’t my question – I take it from discussions you had with Dr. Rancourt before the class began – I suggest to you that Dr. Rancourt told you he

would give an A+ to every student – I'll remind you that you've affirmed to be truthful – please be truthful.

P: Um, I don't remember exactly – I think he wanted to give everyone an A+, but not a guaranteed A+ – I think he wanted that everyone would have an A+ but that they deserved it as well.

H: So you've told us that's what he wanted, but factually, I suggest to you he said "my new pedagogical strategy is to give everyone of those students an A+", didn't he? There was no secret that going into that course, wasn't there?

P: I can't say with certainty – are you asking me if he literally said that? Honestly, I didn't expect everyone to have an A+. I only learned afterwards, after the course, that everyone had an A+.

H: The reason you weren't expecting those results, Mr. Marchand, was that you knew it would be ludicrous that every student in that class would get an A+, didn't you?

M: Objection, that's not relevant.

A: I think it's relevant to the credibility of the witness.

H: You were the TA in that course – base it on that knowledge.

P: Well I knew there were some students who weren't taking it seriously – I don't know if those students dropped the course, but – sure it's always surprising that everyone would get an A+ -- when I had a course where the average was 9.8, it was surprising – but I didn't do the evaluation – it's not impossible but it's very rare that everyone would get an A+.

H: Just getting interference, I'm going to turn off my phone. Mr. Marchand, were you pleased to be accepted at Berkeley?

P: *(Laughs)*. Yes, who wouldn't be?

H: And did you have to present to them a transcript of your marks at the UofO?

P: Yes.

H: And were those very good marks?

P: I believe I had an average of 9.8 in my undergrad, which is good, I would say.

H: Were you hopeful that Berkeley would find the marks from the UofO credible, that there would be no tarnish in the transcript?

P: That's hard to say no to – I would be hard not to want the UofO to have such a bad reputation that another university wouldn't take it's transcript seriously – but honestly it was my reputation as a researcher and the support of my professor at Berkeley that were at least as important if not more than my undergraduate marks. But yes, I would have been worried if the UofO was on a blacklist of universities in the United States, that's for sure.

H: Is that because if there was any tarnishing of the UofO's reputation in relation to its grades, that would have negatively affected your prospects as a graduate student, wouldn't it?

P: I can't say that – I don't know how people at Berkeley view the UofO or if they know anything about it – I can't say how or why I was admitted – with the same marks and same background from a less prestigious university than the UofO would I have been admitted? I really don't know if people in the U.S. know about the UofO – maybe I had an average of 9.8 at UofO but at another university I would have had an average of 9 or 8 – each university has a different average, and people have to do that research – I honestly don't think we can compare transcripts between students coming from different universities – maybe that was done – I also had a good mark in the GRE – graduate requirement examination – honestly I don't know how much weight Berkeley put on a transcript from a university that it does not really know.

H: Can you tell us Mr. Marchand, was the controversy about Dr. Rancourt's pedagogy, and people getting an A+, was that discussed at Berkeley?

P: No, except for the people who I told about it personally, no, not to my knowledge.

H: Do you recall a letter from a professor at Berkeley about this?

P: He was my professor – I told him about it. Ignacio Chapela? I was in contact with him before.

H: Now, there was an occasion – we've heard evidence about this before – want to know if you were in class at the time – when a letter from Dean Lalonde to Dr. Rancourt was read out in class – do you remember that?

P: I don't remember that event – I may have missed it, I missed some classes for conferences. I don't have personal memory of that event, so I may have been absent.

H: Just going back to the pedagogy that Dr. Rancourt was using in this class – what was your understanding of the purpose of the final exam – you mentioned yesterday it was a take-home exam – what did you understand the purpose of the final exam to be?

P: If I remember well, it was work about...

H: Just as second, Mr. Marchand, I'm not picking up the translation.  
(Consults translator technician). Apologies, please go ahead.

A: You were saying, it was work about...

P: It was individual work on a pretty open subject, to show what the students had learned in the Solid State course – I think the only criterion was to use what was learned in the course and deal with a subject that was related to Solid State physics. But I don't have more information, and I think that the professor put the emphasis on it being a very open project for which the format and content could be discussed with the professor. So I really had no personal idea about the work done by the individual students, because I did not participate in the evaluation.

H: But, just to confirm my understanding – the students had to convey what they learned in the course, and it had to relate to Solid State physics? Is that right?

P: Yes, I think so.

H: And given that it was a take-home exam, does that, based on your experience as a TA and a student – does that alter your expectation regarding the content of the exam?

P: I'll respond from my general experience – yes, a take-home often, the students think that it's easier because there's less stress about memorizing and producing something within 3 hours of examination, but even if it's less stress, it ends up being more work – in my experience. Because there's more time, we often take more time doing it. So it's really different – it's a different challenge.

H: Can you just describe the nature of the challenge – what would you have been expected to be displayed in the final exam?

P: Well, again, I'm speaking about a general take-home exam, my general experience.

H: Well let's turn to the specific course – you were the TA, you heard what Dr. Rancourt said – what would have been reasonably expected in terms of what the students should have done?

P: I think students should have done individual research, find articles – if a conventional exam is about memorizing what was done in the course, then a take-home is about going and finding supplementary information – so I would have expected a research work, to go find extra material, to make connections, to look at Solid State physics in the broad sense – to not only speak about the subjects seen in the course, but also to make links with other subjects. Solid State physics is so important in all modern technologies and applies in other sciences – in

chemistry, biology – there are so many opportunities to connect the material to important subjects, even in everyday life, that I would have enjoyed, if I had to evaluate or read these exams – which I didn't do – but I would have liked to see the students push further and broader.

H: And was your expectation that if the exam displayed what you just described, then the student would get a high mark?

P: Yes, the capacity to work independently, to do research, makes the difference between a good and excellent work – these are just criteria I hold personally – but yes, as an evaluator I would recognize and appreciate this kind of effort on the part of students.

H: I propose something a little unusual, and I'll allow Mr. McGee to provide input – I propose to put forward a student's exam and see what the witness feels about its evaluation.

M: I think it would be appropriate to exclude the witness.

*(Witness leaves)*

M: I have some concern – Prof. Rancourt has described his evaluation and the system he used – he said, it wasn't just about the exam – it involved a number of evaluations throughout the term – it involved verbal evaluations and discussions with students throughout the year – this witness has said he wasn't involved in evaluations – what we're going to do is ask the witness to look at the exam and say "is this excellent" – we're asking the witness to do something that he wasn't in the position to do then, and it does it without giving him the context of what Prof. Rancourt said he was doing to evaluate students in that class. I'll put it to you that it's not fair to do this to this witness.

H: Mr. McGee's comments are fair, but I'll allow Dr. Rancourt to answer this, and then at the end of the day I'll say that Dr. Rancourt has no credibility about what he says about his evaluations – and one piece of evidence that may help you is to have a TA from that course's reaction to an exam – Dr. Rancourt may refute that when he continues his testimony – but if this witness says "that does not meet my criterion for excellence" this might help you at the end of the day.

A: OK, I'm going to permit the question.

H: Now, we haven't downloaded this – we'll take a moment to give it to you electronically.

A: Do you want to break now for lunch?

H: We could do that, it might be quicker. It's 12:00.

A: 1:15?

H: Yes.

*(Resume at 1:19)*

H: I have a document for the witness, it might take him a while to read it – not going to say anything to him, I'll just give him a moment to read through it (*hands exam to witness*).

R: Do you have an extra copy?

H: No – actually yes, I do – here (*hands exam to Rancourt*). Sean, just letting the witness review the document.

P: Yes, I think I will be able to remember what I read.

H: Just so we understand, Mr. Marchand, Dr. Rancourt will have an opportunity to comment on this and give his perspective – just asking your perspective – would you agree this is somewhat of an unusual response in terms of a final exam, in your experience?

P: When I started reading the first pages, yes. I understand that the *consignes* is something drawn from the course. But yes, the introduction is pretty long and shows introspection of the student regarding the pedagogical aspect of the course – I don't think this was disallowed or contrary to the idea of the exam – but if I had to correct this, I would ask or say to the professor – I would consult the professor first, and I would say “well, I don't know how to approach this – it's interesting, it's well-written, but I don't know how to evaluate this” on the one hand, and if I had to correct this I would have more precise instructions. But it's well written.

H: Is the document on screen?

A: Which document?

D: Its' UO000048.

A: OK, so 146.

H: So you dealt with the first two pages, turning to the third page – let's give the Arbitrator a moment to pull it up – before I get to the content, do I understand correctly that this being a 4<sup>th</sup> year physics class, you would have higher expectations than a first year class?

P: Yes. Yes, in the sense – students won't necessarily be better at writing but will have a better ability to research, a better knowledge of physics.

H: Now, it would appear that the science part starts at the 3<sup>rd</sup> page, and correct me if I'm wrong – it seems that the science relates to a Google search of glass and the

student does a comparison of how many documents show up compared to things like Britney Spears and Einstein, is that fair?

P: No, I think that what was done is to study glass and glass breakage and to study how glass breaks and the physics behind that. I think that the 3<sup>rd</sup> page with the Google search and other statistics further down – all that is to bring up the importance of glass. It's a bit long, and I would really have preferred to have more information on the following, and the introduction is too long, but – you know often when we have exams like this, we give students the opportunity to either show us a draft or show us something so we can give feedback on the expectations – if a student showed me this, I might have said “do more research on this, cite scientific articles” – but I don't know at what point instructions were given – I find it's a good idea, I appreciate the initiative of the student in doing a scientific experiment, but I find unfortunately that it could have been better elaborated – if I had the opportunity I would have given feedback to the student.

H: Let's put it another way, Mr. Marchand – would you agree that a Google search comparing glass to Britney Spears is not what you would have expected for a 4<sup>th</sup> year exam result?

P: Listen – it's OK to mention that glass is different than something else. It's OK to mention the importance of glass. But to spend a whole page on that, yes that's too much. The student should have looked for more information on the functioning of glass. My problem is not necessarily with the 3<sup>rd</sup> page, it's that a bit of development is missing following this. But yes, I think that more work could have been done. It's my analysis.

H: You've referenced the 4<sup>th</sup> and 5<sup>th</sup> pages. Let's turn to the 4<sup>th</sup> page and refer the Arbitrator to the paragraph “Il fallout ensuite”. Do I understand that the student at this point is referring to an experiment he carried out breaking beer bottles?

P: Um, yes, I think it is about that. At the end there are more details.

H: And, do I understand correctly that he refers to this experiment and then acknowledges at a later point that he didn't quite get it finished and that he wishes he had? Is that fair?

P: Yes, he explains everything he was able to do – he explains the different – he makes a list of the different things he could have done, the different factors to consider, the different physics principles involved. Yes, it gives the impression that it's not finished.

H: Going back to the criteria you told us about before lunch – you expect students to do research individually – do you see this here?

P: No, I think it's one of the two problems – the two things missing are 1) citing sources, scientific sources; and...



A: So, to cite sources.

P: And the 2<sup>nd</sup> thing is to have written more details about the results of his experiment – so if this person did an experiment, the results are missing – what did he measure, etc.? I would have liked it, personally, as an evaluator, if I had been one, I would have suggested to the student ahead of time to explain these things. I understand that a student has a limited time. The problem is that there are not enough details, I find. It would have been fine if the student had results – if the student had done an experiment and didn't understand everything, that's fine – but precise information on the experiment is missing. On the other hand, it's a very good idea – but it remains incomplete.

H: Just to be clear – when you refer to it being a “good idea”, are you referring to the beer bottle experiment?

P: Yes, to do experiments on the breaking of glass. OK, I understand that safety measures should be taken, but I think it's possible – to do it in a controlled manner, and I have confidence in the student in knowing the basic principles about glass – but what I mean is that studying the breaking of glass is relevant and fits in with this course.

H: Now just one final question on this paper – of course you don't know if the student displayed his knowledge in some other way – based on just this document, would you agree that you would have been hard pressed to give a passing grade?

P: Um, I don't know where he was in the past, so I can't respond to that – but I would say that there is a lot of room for improvement, it's an effort that, if the professor had asked me, I would have said it's a very average effort, because of the reasons I mentioned. I don't know if there's a place for the student to improve – I wouldn't say that he should fail, but I wouldn't have been particularly impressed, just as it is.

H: I'll give you a paper copy and put this on the screen as well.

D: This is UO0000385.

H: Just looking for a copy for the grievor. (*Hands paper copy to Rancourt*).

P: OK.

A: 147.

H: Oh, thanks. If I suggested to you that this was a piece of work you might have expected from a CEGEP student, maybe 1<sup>st</sup> year, would that be accurate?

P: No, in my sense we cover thermodynamics questions in 3<sup>rd</sup> year. It's a basic question, on the other hand, but we cover thermodynamics in 3<sup>rd</sup> year. I think it could be

understood by students at the end of the undergraduate program. I don't think students before 3<sup>rd</sup> year would understand this.

H: I didn't put my question clearly enough – not taking issue with content being something covered in 3<sup>rd</sup> year – in terms of the level of analysis – and you've graded papers at this level before – it might be something from a first year student, right?

P: There's nothing – maybe what you mean to say is that it's short, it's not very detailed, but the points indicated are good – I have the impression, honestly that the student – especially from what I read – it's possible that a student in 3<sup>rd</sup> or 4<sup>th</sup> year who reads that – again, it depends what the students were asked to do – I don't believe that the student wasn't capable – just by reading this I can see that, my impression is that the student didn't just copy this from a text – it doesn't seem like plagiarism, it seems like the words of the students – from this, the student understands the material of 3<sup>rd</sup> and 4<sup>th</sup> year – it's too short, but that doesn't mean the student doesn't understand. In fact in the last three paragraphs the student starts showing more detail, equations, etc. – I don't know what the expectations were here. But I've never seen someone from CEGEP – I haven't corrected in CEGEP – I've evaluated many courses – at Berkeley, I was TA for first year university courses, and from what I see it's higher than that level. I can be sure of that.

H: Well since you mention Berkeley, in the absence of the student displaying anything else beyond this page and a half, could you pass a student with this display of knowledge in a first year course much less a fourth year course?

P: Probably, students are going to ask us always “how many pages do you want?” In my experience, in each course at Berkeley, students asked us about the final projects – if students weren't sure they would show us drafts – if the instructions were to do 3 pages and they only did 1.5 pages, unless it was an incredible 1.5 pages, they wouldn't pass. It depends on the rest of the course, of course. But if you're asking me if they will pass, it depends on the expectations that the professor has set and where the professor sets the bar. So, if the professor asked for a page and a half, we can't do less than that.

H: We'll move to one further paper, which is a current exhibit. I don't have an extra copy for the grievor.

M: Which exhibit is this?

D: It's exhibit 11.

P: OK.

H: Did you also note this was a somewhat brief...

P: It's very similar to the one we just saw – there's a problem – maybe – I'm not aware of all the discussions between the student and the professor individually, but I have the impression – if I was the person who gave the expectations, I would have set a minimum of pages or something. For sure, students are citing academic articles, but I think – it's not that the students don't understand or that it's not the right level – maybe the expectations could have been clearer, because – again, if I see that many of the submissions looked like this – I think these students have done similar work, which is fine for a page and a half, but maybe more work could have been asked for, or to specify what the sources were. Again, there, I would say that, in my opinion, someone who had done half of their undergrad would not be able to understand these concepts – it's definitely something expressed in their own words, and that's not bad – but yes, it's missing content. I don't have any impression that these are bad students.

H: You mentioned sources. Would it surprise you that this content seems to be significantly derived from Wikipedia, and would you see that as an appropriate source for a paper of this nature?

P: If we start, if sources had been asked for – students can certainly use Wikipedia, if they want, just to give background information, but – no, Wikipedia on its own, I don't believe that it's a source we can use – in the course, the professor asked the students to read many sources, what we'd call “primary literature” – if I'd developed the criteria for the exam, I would have said they must use primary literature – students should certainly go and look at many sources – students at that level should know it's not sufficient. If I had the time to correct this, I could have suggested it, but I didn't have time for that.

H: Is that an exercise that professors and TA's do as a matter of course? Check for whether there's source material on the internet or similarity in content on the internet?

P: That's difficult to say – if I had to look at 5 pages, that's a lot of work – there are signs – if there's one paragraph that's different than others – e.g. if there's something that's “written too well” – I feel bad saying that – but for sure, if someone gives an impression that there was plagiarism, you have to look at that.

H: You're a graduate of the UofO – does it cause you any concern that your *alma mater's* reputation is going to be affected by a practice that results in all students in a class getting an A+ and that being known in the university community? Does that not worry you?

P: I don't believe – listen – I know there was a lot of talk in the media about the conflict between the professor and the media – but despite all that, as an alumnus of the UofO, I am not worried – I was a physics student at UofO, I'm not a doctoral student in Environment (?) at Berkeley and I don't think my undergraduate marks have much weight anymore. It's not something that worries me. In addition, even when there are articles in MacLean's – I know many students. There are many things that happen at a university – there are often political debates and protests – many things happen at a university which give, at times,

publicity that the university does not want – but I’ve never seen proof that any controversy at the UofO hurt alumni of the university, and without that proof I can’t start worrying about that.

H: Thank you, Mr. Marchand, and thank you for your evidence – Mr. McGee, you may have some other questions, otherwise...

M: We’re going to ask for 15 minutes. If we could have the room, that would be great.

H: No problem.

*(Resume at 2:46)*

P: Exhibit 146? Do I look at the other ones as well?

M: Yes, please. So, I would like – you have – the University asked you to do an evaluation about what you find in this document, and asked you – as a final exam, to say how you would evaluate this.

P: Yes.

M: You’ve said you didn’t have the context about how this was evaluated – what I’ll do is give you the context and ask you to re-evaluate the exam. If I pose the question to you: Professor Rancourt said plus zero on this document, did you understand this was the case?

P: No, but I saw the word “oral” at the end.

M: So when – I’ll give you more context – can this demonstrate someone who could have had a high mark – what I’m told Prof. Rancourt’s testimony will be is that very early in the course, M. Grenier expressed himself being in disagreement with traditional questions and wanted to look at something more practical, such as recycling of glass – so his study began with study of glass and the maximum lifetime of bottles, and why there is a maximum lifetime. So he read journal articles, and looked at the fracture mechanisms referred to in *Physical Review Letters*, are you familiar with that journal?

P: Yes.

M: It’s a highly reputed journal, and in order to understand and illustrate the physics principles and how they could relate to the lifetime of bottles in the subject of recycling, there was a discussion, at a high level, about “tribology” – what I’m told is that it’s the phenomenon of friction related to surface charges and tribo-electricity, and its links to fracture – this includes the study of chemical bond-breaking and surface charges, and that the susceptibility to creating these charges are related to the characteristics of the material – during the classes during the semester, the student read these articles – both professor and student read these articles – and Prof. Rancourt helped the student in his reading. Mr. Rancourt will say that there

was a component of having fun with an experiment, where the student wanted to see if he could see these phenomena in practice, and he would have planned experiments to see this in action. Prof. Rancourt will say that he never set any limits to the number of pages and so forth, and this depended on the individual, but that during the discussions following this submission, there were discussions on these elements, and on the possibility of pursuing these experiments, including investigations to see if the student understood the impact energy, shattering patterns, is that right?

R: *(Hand gesture, more or less).*

M: OK, I'm sorry I'm a simple artsy fartsy trying to explain this – what part of the bottle would break during the experiment, in relation to the high level physics concepts of the course – it was in the context of this period, which lasted throughout the course, including the final exam before you, that the professor gave the A+.

H: Objection. I'm not going to ask you to repeat the question but...

M: *(Laughs).*

P: But there wasn't a question, was there?

H: Maybe you haven't posed the question yet, but when you do reach that point, the purpose of the reply evidence is to clarify the answers given by the witness – we can hear from Dr. Rancourt on this background, but I suggest that the response by the witness to this assembly of facts is not going to assist the Arbitrator in this proceedings.

M: Well, I had an objection and I said – you can't answer the question without context – you can't only look at the exam and say what the evaluation would be...

A: I'm going to permit the question – I think when the witness answered he said there was a context and more specifically Mr. Rancourt will be speaking on the question *(laughs)*.

M: So that's the exam where you luck down and see +0 +0, I believe.

P: Yes.

M: *(Confers with Rancourt)*. I'll ask a question – in this context, does this additional information have an impact on your conclusion regarding the sufficiency of the work of this student?

P: I would like to clarify – my understanding is that during the cross-examination I was doing an exercise where I evaluated a work that I received in a course. If we're talking about the integrity of the final work, it relies on what is written on paper. With the information you're telling me, what I would say is that I could not exclude the possibility that the student had done an exceptional work, because I was not a witness to the work this student did.

Also, what I would like to say, and which I did say before – I was satisfied by the choice of the subject – it was an original subject, it was fascinating and the concepts were right – there was a lack of detail in the written work – I wasn't a witness to other work the student did aside from this.

M: For the other two exams, I could give you the context, and could you say that your response would depend on the same things?

P: My comments were different for all 3 – but, if there was extra information that was transmitted orally by the student, I couldn't exclude that the student did an exceptional job. So in that sense, it's the same answer.

M: I understand that you have – let's talk about the gmail exercise of yesterday – you made a search for all emails written by Prof. Rancourt from his email addresses during the period requested, right?

P: Yes, Jan. 1, 2008 to Jan. 1, 2009.

M: And there were something like 1400 emails?

P: Yes, something like that, not sure of the exact number.

M: Just to finish, I would like to understand where these emails would have come from, from Prof. Rancourt – I have a partial list, and I want to make sure there were no other sources – so you worked with Prof. Rancourt on the Code, I've seen

R: (No code).

M: No Code.

P: Yes.

M: SCI1101?

P: Yes.

M: Summer research?

P: Yes.

M: Master's in science?

P: Yes.

M: A scientific article?

P: Two, I think.

M: Sorry, two articles. Your thesis defense?

P: Yes.

M: Possibility of creating a course 2101?

P: Yes, yes I think so.

M: I'm trying to see – where you involved in the Freedom of Expression committee?

P: Very little, to my recollection – I may have been on the mailing list. A large part of these emails were from mailing lists.

A: Let me see...

P: I was on a lot of email lists, not very involved.

M: So you were on other mailing lists of Prof. Rancourt.

P: Yes, like the Science in Society course – there were tens and tens of emails sent throughout the semester.

M: Were you on the Cinema Politica list?

P: Um, I think I was for a while, yes.

M: We found another email, April 22, 2008. We've already confirmed that it's one of the emails found in your inbox.

P: Yes.

M: Can we put this into evidence?

A: I'm trying to mark it.

M: It's April 22, 2008.

A: So that will be 148.

M: Those are all my questions, thank you.

A: Thank you.

P: Thank you.

*(Rancourt takes witness stand, University continues cross-examination of grievor at 3:13)*

H: Just let me know when you're set, Dr. Rancourt.

R: OK, a few seconds.

H: That's fine. Dr. Rancourt, on May 22, I asked you some questions about the use of your gmail account, and I asked you, did you exchange some messages with students on your gmail account, and I'll read you a translation of your answer. "I had attempted to have the most communications that had to do with the University on the university account, but when inviting graduate students to a social evening, I would do it from my gmail account". Do you recall giving that evidence?

R: I don't remember that it was my complete answer – I don't remember the question, but I do remember those were my words.

H: Are you trying to leave us with the impression that your use of the gmail account was confined to social evenings?

R: No. In my memory

A: Just a second.

H: Well of course we know there was far more than emails about social evenings.

R: I'm in the middle of answering.

H: Oh, OK.

R: In my memory, emails about the course SCI1101, many other things we've talked about, were done from either my physics or university accounts. So, I don't know what fraction of emails came from my gmail account – you found 10 emails, if I remember well – there were surely more, and these emails, from my point of view, are emails containing interactions between students and myself, as a member participating in the management of the university under the framework of what we call "Collegial Governance"...

A: Under the concept of...

R: Under the concept of "Collegial Governance". Students, like Philippe Marchand, were members of the executive of the student associations of the UofO – and students are members of all the most important committees at the university – this includes departmental committees, all the development committees at the faculty level, all the committees at the university level, even the highest committees, which are called the Senate and the Board of Governors. Students are integral members of the governance of the university, as well as professors, and many professors and many students have, we could say "conflicts" – differences of opinion – about the use of university resources, on the internal rules of the university, and when these members of the university community choose to organize a point of view, or to organize a campaign to change something at the university, it is normal that their communication



will be, to a certain degree, privileged. And, it was easier and safer to use gmail. For example, recently, through an information request through the Access to Information and Privacy Commissioner, that professor's emails are private, even if they are on the university network – but that is a recent development – I had reason to be concerned about surveillance on the part of the administration, and that explains, probably, my reticence, at times, to use my professional email, even it would have been entirely legitimate to do so. There is no lack of evidence, even in this process, that the university is ready to employ methods of surveillance that are not legitimate. We know the name of the student spy who was hired by the administration, her name is Maureen Robinson – there is no lack of evidence about the false identity she used to gather evidence about students – about how she used this false identity on the web to get information about students like Mr. Marchand – I think it's normal that, in an institution where there are diverse influences, that the different parties should have a certain freedom of speech, academic freedom, without being watched over, and that's how I understand it – at the same time, everything that had to do with – I think there was a mix – I had 3 accounts at one point – there is a mix of everything in all of them, it's hard to keep them separated when one has 3 email accounts.

H: Dr. Rancourt that wasn't my question – I'm not questioning your propriety in having a gmail account – I'm talking about your integrity in this process – you told us your use of gmail account was for social occasions, did you not?

R: No – I gave everything I could, I did this consciously – everything that was “activism” of the kind we talked about today – was not relevant – it touched entirely legitimate things that I was never questioned about by the university – I did a search on things I considered relevant, and my exchanges with students where I gave opinions etc. about activism, all that was part of my normal exchange with other adults who also were part of the governance of the university – I did not consider this relevant. However, I searched my gmail account, as Mr. Marchand did, and I gave you what I came up with. That is the result.

H: Dr. Rancourt, you were well aware that part of the University's position in this matter was that you were inciting students to violence – in fact you blogged about this at length – you even cited our submissions and put them on your blog – so you were well aware this was an issue in these proceedings, were you not?

R: Yes, I knew that from the moment you made your opening submissions – and in my opinion, there is absolutely nothing in these emails that would suggest I incited violence – I find that ridiculous. I find that outrageous.

H: Just want to be sure I understand you correctly – because you find the allegations ridiculous, you decided it wasn't relevant, right?

M: No, that's not what the witness said.

H: Well, clarify your evidence.

M: The witness said “there was nothing that I saw in it that was relevant”.

A; But the question put to the witness was relevant, he asked the witness to clarify his evidence, so he can do that.

R; Mr. Harnden asked me something, I said no, and now with the intervention I’ve forgotten, I’m sorry.

H: You said that because you found the allegation “ridiculous” that’s what I got from translation...

R: No, no...

H: Just let me complete my question. You said because you found it ridiculous you didn’t produce that.

R: No, no – the idea that there could have been evidence about my inciting violence, that supported the incitement of violence, for me that was outrageous, because these emails, in my opinion, had nothing to do with that and could not be interpreted that way – I find it outrageous that you take these emails, even considering the context, and you suggest that these emails are evidence that I incite violence or that I incited violence, while we see very well in their context that these are exchanges between individuals who try everything they can to have an influence in the institution, and who explore together the best ways, the methods that can give an influence that is legitimate – because protest is legitimate, it’s protected by the *Charter*...

A: They wanted to have a...

R: A legitimate influence – protest, using one’s presence in a place – these are all things that university students and professors have done for decades and which have their place on a campus – it’s even troubling if these activities are absent from a campus. So, it’s obvious that elected student representatives, members of the community, professors dedicated to changing things – you are going to take their activities and say it’s inciting violence, and I find that outrageous. For me, personally, it’s a sign of bad faith on the part of the University.

H: Just so I understand – you’re going to say that’s why you didn’t produce these emails?

R: No, that’s not at all what I said – I don’t have these emails – I clean up my email regularly, and I don’t have it. What other people have is their business – I don’t have any reason to keep old emails.

H: I’ll turn, for a moment, to exhibit 145, and I’ll ask for your clarifications.

R: So that's....

H: It might be in front of you, I left it with the witness.

M: 145 is which one?

H: The Claude Haridge email. It is on screen, and I'm not getting into the content of it.

R: Oh, I have it, I have it in front of me. Should I take a few seconds to read it?

H: No, I'm going to ask you about Claude Haridge – you and I had exchanges about Mr. Haridge earlier in this proceeding – do I understand from this that Mr. Haridge was part of the activist group that you exchanged with at this time, back in 2008 in this case?

R: No, this email was sent to specific people, not a group.

A: I'll repeat the question: Did Mr. Haridge form part of an activist group? Did I phrase it right?

H: *(Nods head).*

M: No.

R: I understood differently...

H: Does it refresh your memory – can you advise us – Mr. Haridge was a recipient of more than this email during this time period?

R: Oh, I don't have memory about how many times or when I would have sent email to Mr. Claude Haridge – I don't remember that, I don't remember if there were groups that could be called that – I know there were email lists which people could sign up for organizing reasons around certain themes – e.g. for the creation of the course SCI1101. If this was the case, then I think Mr. Haridge would have been part of such a list, but I can't be certain. I would think so, because Mr. Haridge followed the course SCI1101, he was regularly in attendance – I imagine if there was a movement to continue this course and there was an email list, that he would have been part of it. I can't remember for certain. From memory, it was rare that I would have sent an email directly to Mr. Haridge, and this time it was an email in which I responded to his email. In this case he sent an email about something he did, he says "I'm calling Julie Cafley this morning to get an appointment" – and I respond to Mr. Haridge. I don't know if that can help?

H: Well as you know, Mr. Haridge's name surfaces later, and as you know, he was one of the 3 persons charged in the firebombing in the Glebe, wasn't he?

R: No, he wasn't, and you know this because we discussed this earlier.

H: Do you recall sir, he acknowledged at trial he carried 1400 rounds of ammunition in the woods north of Maberly(?).

R: Ooh-la-la I don't know, I didn't read that article – all I know is that he was charged with something called "Improper Storage of Ammunition", I think – I don't know if that charge was pursued or abandoned, I don't know.

M: Is there proof he was charged over the firebombing in the Glebe, we haven't seen that?

H: He was charged in conjunction – he went into the bushes north of Maberly and buried ammunition, he was convicted and had 8 months of probation, I don't know if the witness knows this?

R: No.

M: Just to be clear, saying he was charged in conjunction with the firebombing leaves a very strong impression.

H: That's a fair point, I didn't want to leave that impression.

R: I don't remember hearing that in the media, and excuse me, I think it's a fabrication – the media said things I strongly disagreed with about Mr. Haridge, I called the media, and they changed those things. I don't have any memory about what you're saying.

H: We'll return to it next week. We'll move to exhibit 139, please.

R: Yes.

H: Have you had a chance to review this?

R: Quickly, not in detail.

H: Well take your time then.

R: I propose we should start, I haven't read in detail, but I can during the break.

H: Absolutely – turning to the last email, which is your email.

A: Can you refer me to the page of the document?

H: 2<sup>nd</sup> last page.

M: Page 7.

A: Page 7? Page 6?

D : Page 6.

R : Mm-hmm.

A : Where are we looking?

H: Email begins “Please consider this”. In this instance you were counselling students on strategy about how to protest this “Code” that was the issue?

R: No, I don’t agree with your word “counselling”, not at all.

H: You wouldn’t say when your email starts with “Please consider this” that you’re not counselling them on appropriate strategy?

R: That’s it – it’s my “two cents” as the expression goes – they can take it or leave it – counselling suggests a professional person who gives an expert opinion – that’s not at all what’s going on in this email – I treat, and I am treated by students as an equal in this exchange, and I treat them as equals, and we share information freely – we examine, together, what the good methods are, what the bad methods are, we exchange about this and one can see that even if Philippe Marchand was my student at that time, that he felt completely free to criticize me on those questions, because it was separate from our professional relationship of research supervisor and student. We are in the domain of university governance and trying to have a valid point heard using media, the public forum, pressure methods that are completely legitimate. As always in these discussions, there is a question of people with less power – how can they also have their say? And how can they get their message across? So there is a discussion about these methods, and about direct action vs. simply writing and asking to be heard, asking to have a meeting with the administrators or the President – things that are always done – in this case it had gone much further than that, because the administration had decided it was going to impose a Code of Conduct on students – independently of their academic work, they were going to impose a certain morality – it was like going back to the 50’s – the administration was very advanced in this Code of Conduct, and students across Ontario are very against this kind of Code of Conduct and against all kinds of involvement of police on campus based on all kinds of claims made by the university administrations – students took the position that they had academic freedom and the right to participation in university governance, and that there was no need for a Code of Conduct going beyond what was already there. So this was a great battle that students won, because the President, Allan Rock, announced there would be no Code of Conduct, and students were very happy with this. It was a necessary battle – about intellectual life on campus. It was in the context of this battle that there were exchanges between many students, students

who were very mature, such as Philippe Marchand, who was, I think a VP in the student association, and others who I recognize here – we exchanged like this because the free exchange of ideas is the best way to find the best methods – have our ideas criticized, advance our ideas without having fear, without worrying that the university would rummage through our emails and come up with all kinds of conclusions. And I contributed when needed and said “no you’ve blown what I’ve said out of proportions” for example, I said “contrary to Philippe’s comment, I don’t seek a group that measures its value based on how much anger it creates, etc.” and later I say “I do not. I can explain my choices of methods and positions, but this can also be misinterpreted”, and I cite works of literature, e.g. “Pacifism as Pathology” and “How Pacifism Protects the State” – for example “Pacifism as Pathology” was written by a Dean in an American university, Ward Churchill – I give my opinion and I try not to be misinterpreted – and I think this exchange of information is an essential part of intellectual life on campus – we must talk about the rules and our criticisms – it’s when students and professors go to sleep that administrators go and make rules, and it takes us 5 or 6 years to wake up and see that the rules are no good – it’s always like this on campus, and this is the context of these emails. I know that Mr. Harnden himself does not use these tactics, he takes instruction from the University – but to go and take these emails and say it’s inciting violence, I have a hard time understanding this. If they had asked me about it, I would have been happy to have this discussion with Allan Rock or anyone else, and if they had said “Mr. Rancourt, these emails are hurting students”, I would have stopped. I know they had complaints like that. We realize, at the heart of it, that these exchanges are fundamentally acceptable – if we’re going to go and do what you are doing in this tribunal, that’s going too far – I have a really hard time understanding why you’re doing this.

H: Dr. Rancourt, it’s your choice – if you choose not to answer my questions – I’m not saying you’re not being responsive, I won’t get into that – but if you can’t undertake to not give twenty minute answers, I can’t see us finishing this proceeding this month.

R: I...

H: I’m just giving you a head’s up.

R: I understand, but what you’re doing is so outrageous that I feel the need to explain the social context, how there can be these interactions between students and professors – and if I don’t do this at least once, then we risk having a misunderstanding here, and all of your underlying assumptions will remain unquestioned – that’s what I’m doing here.

H: Dr. Rancourt, at one point you seemed to suggest that your voice in this debate was no more important than the other voices – are you seriously suggesting that you, as a professor at the UofO, would not be given greater weight than one of their peers?

R: Yes, very seriously, yes. And I have personal experience of being kicked out of a room...

A: Just a second, I'm writing down the question...

R: I said yes, I've been confronted during meetings, been told to leave the room, been told "well, now Mr. Rancourt you've spoken enough, you can't speak anymore during this meeting" – there were all kinds of – when students have a chance before them, they take charge and take control of their business – and I was always very far from having that influence – these students were very involved in university and student governance, and were far from being intimidated by a professor or an administrator. I have lots of evidence to that effect. I have enough evidence to confirm this with certainty.

H: Well let's turn to...

R: And I have...

H: *(Audible sigh)*.

R: No let me explain, I have a personality that – I'm someone who honestly gives his opinion, and does so very frankly, but I never use my authority – I consider this to be a fundamental ethical principle, and students know this and feel it. You can ask any student if that's true, and I think you'll see that's unanimous that it's true. You'll hear "oh yeah, he says some interesting things" – but that's about as far as it goes.

H: I'll admit I have a hard time reconciling that observation about how you conduct yourself with the statement by Mr. Marchand, when he says "I am also hurt when you ruthlessly insult people who I respect".

R: Yes.

H: That's his interpretation, what do you think about that?

R: He said he was emotional, that he reacted emotionally, and different people will have different kinds and degrees of reactions – some people will have a strong reaction – it depends on the person – the fact that Mr. Marchand could send me his opinion in such a frank matter shows – that he could send this to me with others in Cc – I've lost the page.

H: Page 2.

A: Are we still on 139?

H: Yes we are, sir. He says "I'm convinced" and then it's the next sentence.

R: OK, I don't know if others were included in this email – I think it's a list and the same people saw this – but anyway, when Philippe can be so frank and so direct it shows exactly what I have said – he can be direct, he can say things exactly as he feels them – and this is the kind of relationship I try to have with all my adult contacts – that we can have such

interactions – he says I’ve insulted his close friends – but life goes on – I don’t agree that I made such a harsh criticism as Philippe said – I don’t think I was ferocious or anything – I wouldn’t have done that, I would have made a very direct and relevant criticism, and that can hurt, I admit, but that is part of democratic discourse – I say things as I hear them, and people react in the same way towards me – in this way we evolve and interact – it’s the very nature of political work. I mean, you go and look at emails like this and you take out words – I’ve had the occasion to look at Allan Rock’s emails obtained through Access to Information, and he says...

H: I’ll object at this point – we don’t need your side monologues.

R: It’s a good point all the same.

A: I understand, but...

R: OK (*laughs*).

H: I mentioned your P.S. – I want to go to that. It’s the 2<sup>nd</sup> page of document – you use the words in the paragraph beginning “Such a committed” – 3<sup>rd</sup> paragraph from the top of the page. The last two lines “victory lies in escalating force and non-negotiation in this case. Nor do we want to fight this using civil disobedience in this case, let’s use force and win”.

R: So your question is?

H: Just letting the Arbitrator write – when you’re cautioning students not to fight with civil disobedience but something else, doesn’t it concern you that they might be led to believe they should use violent means?

R: No, because you just have to look at the context – I’m talking to people I know and we’re discussing how to advance a cause – everyone knows what it’s about – you want to take it out of context and say the word “force” means something else – that’s your right – but I have a firm belief that people who know me, and in this context, this does not mean something that you might imagine, certainly not – it means take more place, even if one must break what might be called the “Rules of Civility” – that’s what it means, and everyone knows – no one has using violent force in mind, or anything like that – the context, I think, is clear – we can see it in how the protest was carried out, in the discussions before and after – if someone thought I used words that were too strong, they would have questioned me about it – Philippe Marchand’s comment was not about my choice of the word “force”, it was about how I criticized his friends. Everyone knew the context, I don’t want to take it out of that context.

H: Well, fortunately, we don’t have to pull it out of context, you made yourself even more clear further down. This explains why civil disobedience isn’t enough, and you make certain suggestions to the students.

R: No, I don’t agree with your question.



H: Are you suggesting you're not making strategic suggestions to these students? I mean, read it...

R: You change your question each time, Mr. Harnden, ask me one question at a time.

H: Well, you can just explain that's not what you meant in your P.S. – so let's just turn to your words – do you agree that you were counselling students about how to take direct action?

R: No.

M: Don't answer, don't answer – I'm confused – is Prof. Rancourt being asked ...

H: My intention was to leave that behind and move on to the words themselves. Moving to your P.S. – do you agree that in your P.S. you were counselling these students with respect to strategies they could adopt in relation to this issue on campus?

R: No, I've already explained that the word "counselling" is not appropriate here – I explained my interpretation of this word and why I refused your earlier question.

H: Now, you go on to say that there was no symbol of direct action, such as verbal confrontation, confrontation with the police barricade. What's your purpose in highlighting that example?

R: OK, if you look at this paragraph, it's what you could call a "shopping-list" – it's brainstorming, it's to incite thought about different ideas and to compare them to each other – so I say "paper airplane attack on Patry's door" – it means throwing paper airplanes at the President's door – it's an image, the media could take photos, etc. – OK, there are many ideas like that – having a verbal exchange with police, if they show up to block an area of campus, for example – this includes "a joyous bonfire on Tabaret lawn" – it's obvious it doesn't mean set fire to Tabaret lawn or go to jail by interfering with police officers' work – it means use your body, use your voice, push things enough that everyone understands that – communicate clearly that you have desires, you want something changed – it's a bunch of different examples, the goal of which is to stimulate discussion and action. It seems obvious to me that that's exactly what it is.

H: Do you have any misgivings about suggesting to these students that...

M: I'm sorry, I thought we were going to try to end at 4:15?

H: Oh, I thought it was 4:30.

M: Sorry.

H: Any misgivings about your email saying “a body-push against the 2<sup>nd</sup> floor glass doors”?

R: No, as I said, these were examples of actions that were riskier, less risky, things that could be daring – it’s a series of examples to incite discussion and debate – these are words, not actions. It’s not an order from someone who has power, it’s a discussion between equals to discover something that could block something that was, in their opinion, counter-productive, in this case a Code of Conduct.

H: So sir, what you’re telling us, as a professor at the UofO, you’re comfortable about putting words like this on a page and distributing them to students engaged in a protest on campus, that you’re not worried about this?

R: No, I said that these are words intended to incite discussion and debate. If you want to say more than that, it’s your job to make those arguments – but I think it’s clear that there was a discussion about this idea of what could be called a “push and take” on campus. All these things must be considered, even if it’s just in order to plan how to avoid something undesirable – all of this must be discussed, because in the heat of the moment, one has to have already thought through different possibilities. So we shouldn’t block ourselves from having these discussions with students. If there was a new Code that says professors should not have these kinds of discussions with students, OK. I would perhaps file a grievance to say it was against the principles of the university, but I would follow it while it was in effect. If the university sends a directive saying “you can’t use the word ‘force’ unless you’re talking about physical force and Newton’s Laws”, then OK.

H: I think that’s an appropriate point to break, and I just want to mention something to avoid loss of time next week – when I return to Mr. Haridge, I’m going to ask that there be a search of his gmail account for all his exchanges with Mr. Haridge. Mr. McGee can make submissions about that, but I would suggest it would be practical to do that search over the weekend. I have no concerns if the Association wants to talk to the witness about that possibility.

M: I will speak with Mr. Rancourt, I will let you know tomorrow, that way we’ll know. If you think that it’s more important not to, I don’t want to interfere, but if you could send the articles over in advance?

H: Absolutely, right away.

M: One thing I wanted to mention – on the 11<sup>th</sup> we have another thing at 4:30 with a partner of yours. If it would be possible for us to leave at 4:00 that day, we would appreciate it. It’s just over at Gillespie. I’m mentioning that because if we happen to go to 5:00 another day, it’s not a problem.

*(End at 4:24)*





# Ottawa U had 'real worries' about activism class

BY TONY SPEARS ,OTTAWA SUN

FIRST POSTED: TUESDAY, JUNE 11, 2013 01:52 PM EDT | UPDATED: TUESDAY, JUNE 11, 2013 08:08 PM EDT

One of the activists shadowed by police in the aftermath of the 2010 Glebe bank firebombing asked an embattled University of Ottawa professor for a character reference after he got busted burying ammunition in a forest.

A years-long slugfest between the university and fired professor Denis Rancourt continued at an arbitration hearing Tuesday.

Rancourt was sacked in 2009 after run-ins with university brass. He grieved his termination and hopes to be reinstated.

The university, however, is arguing in part that Rancourt could incite students to violence.

University lawyer Lynn Harnden probed Rancourt about his association with activist Claude Haridge.

Haridge was scooped up by police after a Royal Bank branch was set ablaze on May 18, 2010.

Haridge — though never charged in the attack — was placed under surveillance and seen to have cached over 1,400 rounds of ammunition in a forest outside of Ottawa about a week later.

It was after he was convicted of careless storage of ammunition that he asked Rancourt — his former professor — for the letter of reference.

“You were reluctant to share that with us weren’t you?” Harnden asked.

Rancourt — who had disclosed e-mails between him and Haridge at the university’s request — said no.

Rancourt, in fact, was seldom at a loss for words.

He met every question with lengthy responses in prim, precise French. Occasionally, Rancourt would even answer a

question that Harnden had asked.

When the university booted Rancourt from campus in 2009, they could not have known what Haridge would do in 2010 — but Harnden said Haridge's actions show the university had just cause to fear what Rancourt's activist students might get up to.

“It lends support to the validity of the university's concerns,” he said, especially regarding “radioactive materials that were in storage (in Rancourt's lab).

“They had real worries about what might happen.”

Outside the room, Rancourt said he would “absolutely not” encourage violence.

And despite his long-running battles with university bosses — he is also embroiled in a libel lawsuit after penning a particularly scathing post on his U of O Watch blog — he hopes to return to students he cares for and colleagues he respects.

“I don't see myself as a troublemaker,” he said. “I see myself as sticking to my principles.

“I don't like to be stepped on.”

His arbitration hearing is supposed to wrap up later this month.

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# University of Ottawa accuses ex-professor Denis Rancourt of inciting violence

BY DON BUTLER, OTTAWA CITIZEN    JUNE 11, 2013 6:32 PM



A University of Ottawa lawyer tried to demonstrate Tuesday that former professor Denis Rancourt, above, encouraged students in his 'activist group' to engage in violent protest prior to his dismissal from the university in December 2009.

**Photograph by:** David Kawai, Ottawa Citizen

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OTTAWA — A University of Ottawa lawyer tried to demonstrate Tuesday that a former professor encouraged students in his “activist group” to engage in violent protest prior to his dismissal from the university in December 2009.

At an arbitration on Denis Rancourt’s grievance that his firing was without cause and in bad faith, university lawyer Lynn Harnden tried to draw a link between Rancourt, a self-described anarchist, and a suspect in the May 2010 firebombing of a Royal Bank branch in the Glebe.

Claude Haridge, one of three men arrested following the firebombing, audited some of Rancourt’s classes as a community student. He was later convicted of mischief and careless storage of ammunition, but was not charged with offences related to the firebombing.

Haridge was “the type of individual” who was communicating with Rancourt, Harnden said, arguing that supported the university’s concern that Rancourt’s community “includes individuals capable of violent activity.”

Rancourt’s connection to Haridge “lends support” to the university’s concern about what might happen

at Rancourt's physics lab, where radioactive materials were stored, Harnden said. "They had suspicions and they had real worries about what might happen."

But Sean McGee, Rancourt's lawyer, pointed out that Rancourt's lab was closed years before the firebombing, so concern about radicals accessing it "can't have had an impact" on the university's decision to close it.

The arbitration into Rancourt's dismissal began last year, and has already consumed about 15 hearing days. Five more days are scheduled, after which arbitrator Claude Foisy will decide whether Rancourt should be reinstated.

In its opening statement a year ago, the university said it would be calling evidence that Rancourt was counselling violence. Rancourt said the university provided details of its allegations only last week.

In a brief interview, he dismissed the idea that he was inciting violence as "far-fetched. I might even use the term scandalous."

Harnden questioned Rancourt about email exchanges with students. In one, Rancourt raised the idea of lighting a "bonfire" on the lawn of Tabaret Hall or engaging in a "body push" against glass doors on the building's second floor.

But Rancourt — who taught at the university for 23 years and was a full tenured professor at the time of his dismissal — said he wasn't advocating either tactic.

Rather, he raised them purely as examples to illustrate the concept of direct action, he said.

"My goal here was to open minds, including mine, to all possibilities. It's an exchange of ideas, a comparison of strategies," Rancourt said, though he acknowledged that it was "always possible to be misunderstood or misinterpreted."

Asked by Harnden whether it crossed his mind that tactics like a "body push" against a glass door might risk students' safety, Rancourt said the only time there's any danger is when police move in to break up a protest.

In another email exchange in 2007, one of Rancourt's students, frustrated by the university administration's handling of a dispute, ended his message with the words, "burn something!"

Rancourt replied, "Burn something, but not my lab."

Asked about that, Rancourt said his response was clearly a joke. "I think it's humorous."

Harnden also raised a statement Rancourt made in an email after anti-Olympic protesters in Vancouver occupied and trashed a cabinet minister's office. Rancourt wrote that the protesters had used "very effective methods, proportional to the problem."

"Were those the 'effective methods' you were referring to?" Harnden asked.

Rancourt said his email comment was "just small talk."

“It doesn’t mean it’s recommended,” he said, describing the incident as “a form of civil disobedience.”

The tactic was effective, he said, because it attracted media interest in the protesters’ issue.

Later Tuesday, questioning turned to Rancourt’s decision to give top grades to almost all students in a 2007 course, a move that prompted a letter from his dean warning of disciplinary consequences, up to and including dismissal, if it happened again.

Rancourt explained that he was using a non-traditional “student-centred” teaching and evaluation method that considered progress individual students had made during the course, not their ability to regurgitate expected answers.

“The only relevant question is, did the students learn as much as possible in order to move forward in the curriculum?” Rancourt said. ““And did the professor do his best to maximize that learning? That was my main preoccupation.”

Rancourt said he declined to attend a formal meeting with the dean to discuss his grading because he didn’t want to participate in what he perceived as “a campaign against me. I felt the dean was led by high administration’s desire to find one or more motives to fire me.”

The arbitration hearing continues Wednesday.

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June 11, 2013 04:25 from Alison Sandor

## Former Ottawa U prof fights to have tenure restored

By: Alison Sandor (@CFRA Alison)

An Ontario labour law arbitrator is set to decide this month whether a former tenured professor of physics should be allowed to return to his position at the University of Ottawa.

Denis Rancourt was fired from his job and banned from university property in 2009 after clashing with the university administration and running what became known as an activism course. He was also cited for awarding 23 students from the same class A+.

Two of his former students were eventually charged in the fire bombing of an RBC bank in the Glebe. Rancourt was never charged in the crime.

Lawyers at the hearing being held at Hotel Indigo on Metcalfe Street poured over emails sent by Denis Rancourt to student activists. Several of the emails made reference to lighting bonfires in the field in front of Tabaret Hall and putting a body against the second story windows of the building.

Lawyers for University of Ottawa maintained the emails could have been construed to incite violence on campus.

Rancourt maintained they were just examples meant to explain a concept of activism, not a directive for violence.

Joseph Hickey, the executive director of the Ontario Civil Liberties Association, told CFRA this case is about a right to academic freedom.

"It is about academic freedom in particular and the right of professors and students to research and participate in university governance," he said. "It's participation in that democratic structure that's at risk when a professor can be barred from campus from participating with students in political action on campus."

The hearing is scheduled to last a total of six days: June 11-14, and the 25th and 26th.

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Tuesday, June 11, 2013

*(Continuation of University cross-examination of Denis Rancourt)*

*(Begin at 9:35)*

H: We're waiting for the translators, but if we could take up the email exchanges involving Mr. Haridge. We can talk about that privately?

M: Yep.

*(Lawyers' meeting in foyer, resume at 9:45)*

H: Sir, just so you understand, there was a production request at the end of last day and we're just reviewing the documents. Just to save time, I'll hand two articles to the witness that I'll be asking him about. While he's reviewing those, I'll take a look at the production.

M: And just so you understand, what we asked Prof. Rancourt to do was to pull out all references to Claude Haridge – we'll take the position that all of them are not relevant, but they are produced.

H: Understood, and that's appreciated.

A: The last exhibit that I have is 148 – does that correspond with what you have?

D: That's what we have.

H: Sean, I may circle back to the emails, but in view of not wasting time, I think we'll just go ahead. Dr. Rancourt, are you set?

R: I'm in the middle of reading this, do you want me to read the whole thing?

H: Oh no, you go ahead – I want you to familiarize yourself with that.

M: Which documents are they?

H: The two newspaper articles that begin with the Ottawa Sun article – let's put that on the screen, and I'll have some questions about that.

R: OK, I've read the articles.

H: Now, if you recall, Dr. Rancourt, we had some exchanges around Mr. Claude Haridge earlier in this proceeding – you had indicated that you understood he had never been the subject of criminal charges, do you remember that?

R: No, I don't remember saying that – I remember saying that in my knowledge he was never charged in connection with the fire on Bank St. – Not that there was no charge ever against him, but rather about what the media called the “firebombing” – it was at a Royal Bank branch on Bank St. – in my knowledge he was never charged with this crime.

H: Now, in reference to....

R: In fact, I know he had another charge against him, because I went to observe the Court process involving him one time regarding that charge.

H: So you were well aware about the charges that were laid against him after the Glebe firebombing in relation to ammunition?

R: No, I don't agree with your characterization – I know that Mr. Haridge was charged with something, it wasn't about the “firebombing” – something else, and I was interested in it, I went to Court to observe that. At the time I perhaps read something about those charges and what had to do with storage of ammunition. I wasn't very knowledgeable but I was aware, and I was interested in the Court process.

H: Perhaps there was an issue with the translation, but did you say you attended a portion of his trial?

R: Yes, once I went to see part of a hearing at the Superior Court of Justice of Ontario on Elgin St.

H: And did that give you at that time knowledge of the charges against this gentleman?

R: No, there was very little information about this – was it – if I remember well, it was the judge who announced his decision regarding Mr. Haridge being beaten in the cell when he was arrested, but that this event was not sufficient to violate his *Charter* rights, and not sufficient to cancel the charge against him – I was either there in person or I read about that – maybe another time, if there was another time in person, where – no, I think there was just one time, and I think it was that time. I can't be certain, because what I read gets mixed up with what I saw in person – I think I planned to go another time, but there was a change of date or something – I think I only went once in person.

H: Well we can review the transcript of our exchanges so we don't need to pursue this further – let's move to article in *Ottawa Sun* and facts outlined there. Do you recall reading this article at the time it was published?

R: Ottawa Sun? That is not written, it says “Post Media”.

H: Upper right side.

R: OK, yes – you asked what question?

A: Do you remember reading this article at the time it was written?

R: No, I've never seen this article before today – I don't have any memory of the photo, and I'm quite sure that I've never read this article. I don't remember the title either.

H: Now I'd like to have this article presented as an exhibit – any objection Mr. McGee?

M: I'm not sure what it would be tendered for?

H: I'll align it with the exchanges with the members of what I might call Dr. Rancourt's activist community and the line of questions I had with him regarding Mr. Haridge – there were the issues of credibility regarding how forthcoming he was regarding these exchanges.

M: Is it meant to prove the truth of statements in the articles, or because the existence of the article is relevant?

H: It is tendered with a view to presenting that this gentleman acknowledged that 1700 rounds of ammunition were stored in the woods and subsequently found by the police – the article indicates there was no issue about that fact at trial – our submission will be that that's relevant insofar as the Association is alleging that the University had no reasons for concerns about Dr. Rancourt and his activist group, and that there was therefore no reason for closing his lab and barring him from campus. And when we say that Mr. Haridge was one of the members of that activist community, it lends weight to the concern about what might have happened with that lab and the radioactive materials.

M: So, yes we do object – the University knew about this article at the start of the hearings – I could go back and read the grounds the University relied on to say that Mr. Rancourt should not be reinstated – I don't remember the burial of ammunition by an acquaintance of Dr. Rancourt being one of those allegations – the University is saying that one of the things it is relying that it had grounds to close the lab – the lab was closed years before any of this happened – it can't have had an impact on the University's decision to close the lab – these facts are simply not part of what is before you.

H: Mr. McGee is right on 2 points – we did not include this in summary of items relevant to post-dismissal conduct – my submission was anchored in the submission of bad faith on the part of the University regarding closing the lab – Association's submission is that bad faith permeated the decision to dismiss. My view is once you put bad faith in play it dramatically expands the arguably relevant materials – it's really an attempt to peer inside the mind of the University at the time it made its decision. It's fair comment to say "they didn't have these facts", but as Dean Lalonde said, they had real suspicions and real worries – the actions of people like

Sean Kelly going into the classroom with a bag on his head, etc. – it is relevant for you to hear – this is the type of individual that was communicating with Dr. Rancourt, that was part of that community – this is the type of individual who had that amount of ammunition in his home – so this supports the University’s concern that that community included individuals who were capable of violent activity – it’s true that while the Police followed him in connection with the Glebe firebombing but never charged him – he buried that ammunition following that...

M:                                There’s no suggestion that he ever did that – he was not charged with that.

H:                                Maybe I’m not making myself clear.

M:                                The article said he went to a place where there was buried ammunition. The article never says he buried it.

H:                                I may be wrong that he buried it.

A:                                But this article is dated Sept. 23, 2011 – I don’t see its relevancy in regards to closing the lab.

H:                                That’s what Mr. McGee is suggesting and it’s acknowledged it came up after the closing of the lab – if your view is that it doesn’t assist you on this issue then we’ll move on.

A:                                That’s fine.

H:                                Now I just want to return for a moment to exhibit 129 – want to clarify and highlight a couple of points. Just to refresh your memory – emails to students and you make comments about direct action – two of your suggestions were “lighting a bonfire on Tabaret lawn, and a body-push against the glass doors”.

R:                                I’d like to correct what you’ve said – I did not make suggestions to do that – I put in P.S. to an email examples of what could be direct action – among these examples there was “a joyous bonfire on Tabaret lawn”, there was “a body-push against the glass doors of Tabaret”, there was “paper airplane attack on Patry’s locked door”, there was “a sit-in” – I communicated that the essence of my communication was that we could not win this campaign against the Code of Conduct by writing letters and having conversations – the students had to, in my opinion, show that they were concerned and even do civil disobedience – this was my opinion, which I explained at the time – so I don’t agree with your characterization that this was about making concrete suggestions – these were examples in P.S. to one of my emails.

H:                                Dr. Rancourt, you have resisted the idea that you were making a suggestion – did you, at the time, perceive any risk that a university professor writing an email to a collection of students might leave some students with the idea you were suggesting something.

R: I don't resist the idea that I could suggest something as a tactic for direct action – it's very clear that this is an exchange of ideas, a comparison of points of view, of strategies, I would say – many students do not agree and are critical of my suggestions – we can see that it's an exchange between people – it's about a Code of Conduct on a campus where students are adults – it's thanks to these ideas, these exchanges, that the students were able to win this campaign – UofO is one of the few campuses in Ontario where there is no Code of Conduct, and this is good for the administration, it's good for everyone. You take sentences from left and right, you allege it's I who gave directions. But that's not the case. You have to read the email in its entirety to make a good judgement of the situation.

H: I'll give you one more opportunity on this then we'll move on, and I'll even let you speak about today – did you, with your astute mind, then or today, have any concern that students would take this as a suggested activity?

R: When I communicate in a context such as this, I realize that there is always, as in any communication, the possibility of being misunderstood or misinterpreted. That's the nature of communication – every time we state something we could be misunderstood – but I believe there is no risk that my words, on their own, lead to violence, because I know this group of students well, and I know the discussion that will follow. I know the back and forth of ideas and exchanges in the discussion, and I know that it's a process which leads – always, in my experience – to good decisions and responsible decisions. My position is that when we do not have this discussion, considering all the factors, that the risk becomes more elevated – that a student will not have well considered and thought out his political action. It's exactly this kind of discussion that, in my opinion, minimizes risk, and sociologists agree with me – it's isolated individuals who are at risk – not student organizers who are elected to their positions, who are responsible, highly performing, who will freely discuss all possibilities and who want to exchange ideas, even if they're not always in agreement. These groups are less at risk. This is how I understand the nature of this conversation. My goal was to open minds, including my own, to all possibilities – because, if we look at the recent history of universities, there was, for example, the Free Speech Movement at Berkeley in the 60's – it was a battle which has been characterized as “ferocious” between the administration and the students – but it was a responsible battle that transformed the university as institution in North America, including Canada. It's the very nature of the university campus that there will be this kind of tension between an administration that would control the lives of students in their expression, in their political activity on campus, and the student associations who want to participate with all their influence – that's the very nature of the university – I'm even of the opinion that there is more intellectual profoundness when this tension exists – that this tension is a sign of intellectual vigour – this is my opinion, and my observations over 30 years – because I was a student as well – confirm this.

H: One more question on this point, and I'll try to use neutral terminology – your reference to things like “lighting a bonfire”, “a body-push” – what concern did you have about safety concerns?

R: The word “lighting” wasn't in the text.

H: Oh, I missed that distinction, you mentioned “a joyous bonfire on Tabaret lawn” – you're quite right that that wasn't in the text. Please go on.

R: Students can take directives from the fire department to see how it can be done in safety – whether it's a BBQ, a big fire – on a big field that's like a football field – there are no trees, surrounded by an iron fence – the University itself might want to celebrate the summer solstice or a pagan festival, I don't know – it would do the same thing itself – I wasn't suggesting an act that would not be approved by the fire department – it's an action that can inspire – there are many reasons that such a suggestion could be very good – it's a “bonfire”, it means a large fire. You want to take my words out of context.

H: Well what about the image that's created by the words “a body-push against 2<sup>nd</sup> floor glass doors”? One image is a group of students pushing against glass doors at Tabaret – did it cross your mind that some safety concerns might arise?

R: Your question suggests something with which I don't agree – your questions suggests that I was suggesting that – this is something I do not agree with. When students do something like this and use their body to exert influence on campus – the only times when there is a danger is when the police get involved and start using force to push back students even though they have a right to protest in that place. The only time that I know of when students got hurt – in fact, there was an incident at the UofO where students wanted to impose themselves in exactly that place, and I believe that a student got hurt because a police officer either crushed his foot or hit him or something like that – but if the police hadn't intervened it would have just been a student protest in the building – but this is the only occasion in the 23 years that I was at the UofO that I know of something like this happening – so students have to discuss this danger, they have to consider how to avoid this type of danger – but the way to avoid it is to discuss it – the way to make students aware of the risks is to bring up the concept – and so that's why there were the discussion regarding all these points – the event that I'm referring to was in the years following the Code of Conduct campaign – I was not involved in any way in that, but I imagine that the organizers would have had discussions about how to avoid that.

H: Do I understand correctly, sir, that you're the only professor in these email exchanges? It's just you and the students?

R: No...

A: I didn't get the question.

H: Oh I just asked him if he was the only professor, and he's just reflecting on it.

R: I'm trying to look through evidence here – there are emails that are addressed to several people, others that are between me and Philippe Marchand individually – let me look here. It's possible that in many of these exchanges the list of recipients is not shown. I can tell you that there were typically several professors in these groups – sometimes 2, 3, 4, sometimes more. From memory, there were a few professors implicated. For example, the email exchanges related to Cinema Politica implicated several professors – there were many professors who came to the Cinema Politica activities and exchanged with the students and myself, etc.

H: Sir, I've just put on screen an email that you sent as part of the exchange on April 26 at 5\_\_ pm – doesn't that refresh your memory?

R: Yes, as I said – this is one of the few emails for which there is a list of recipients – I haven't counted, but for many of them I don't recognize the names behind the email addresses.

H: Well we don't see any emails there that have the UofO email address – can you look through – do you see a professor there?

R: I see at least one uottawa address, contrary to what you're saying.

H: But you don't recognize a professor's name in the group?

R: I already told you that in this list I don't recognize many of the names.

H: So, that raises an interesting issue – you were sending out emails of the nature you're just describing about bonfires – you didn't really know who were the recipients of your emails?

M: Objection, the witness didn't say "bonfire means BBQ".

H: I withdraw that – is it correct that you didn't really know all of the email addresses?

R: No, I am quite sure that at the time I would have known who I was writing to – but at the time it came about that – regarding this campaign, I think that I went to one student-organized meeting – after that I didn't know who was involved in the exchanges – there are about 10 here – when I send an email, I never know if it will be re-sent to someone else, that's true – like any email.

H: Let's turn to exhibit 140.



A: Refer to – this wasn't introduced in evidence – you refer to an email in relation to a text in an email – it was a reference to an email in which there was a number of names – the question was “were there any professors” – the answer was “probably, but I don't recognize any professors in the group” – was that document put into evidence?

H: Yes it was, and I apologize. Moving to exhibit 140 – just with a view to saving us time, I'll tell you that my questions are only going to relate to Mr. Stojanovic's reference to “wanting to burn something” and then your response “just don't burn my lab”.

R: I haven't read the entire email, which is about 10 pages.

H: We're just running into a problem with interpretation – maybe it's the air conditioning fan, which we can't control.

R: So, just to clarify, I haven't read the entire thing, but I'm ready to not read what's below. That doesn't bother me for the moment.

H: I'm just giving you that opportunity to if you wish, if you think you need it for context.

R: OK, we'll see.

H: So, Mr. Stojanovic is a student at the UofO.

R: I don't know.

H: You don't know?

R: You mean right now?

H: I'm sorry – at the time.

R: Yes, surely.

H: Was it the case that he was part of a group of students that you had ongoing conversations with – can I say he was part of your activist group, would that be fair?

R: No – I had a research group – students who were in their Master's, Doctorate's, and undergrad students – I called this my “group”.

A: It was a group...?

R: It was a group of students who I supervised – I called that my research group – it included post-doc researchers as well – Mr. Stojanovic was a student who I co-supervised in his Master's at that time – I believe it was at this time, in 2007 – from memory. And I had exchanges with all kinds of other students in other contexts. And on some occasions,

students from my research group were involved in things besides the academic and research work – for example, Mr. Stojanovic was student representative to the Faculty of Science Faculty Council – so he was involved in student politics, he was also candidate for an elected position in the Graduate Students' Association, from memory. I remember this because the student who was hired by the University to spy on me and the people who were in contact with me spied on Mr. Stojanovic and wrote a report, which I believe is in evidence – yes, I'm certain it's one of the exhibits – that was about Mr. Stojanovic's campaign to be elected. She wrote this report to the Dean of Science about the possibility that he could be elected – she made a report to the Dean about this and to the University's Legal Counsel. And this can be read in the exhibit, if you wish I can find the exact exhibit, that would not be difficult. Do you want me to find it?

H: No, I have no interest in this at all – I'm just letting you answer the question. I'd like to move on to my question, actually. What was the context of this question in which he says "I want to burn something" and you say "Yeah, just don't burn my lab".

R: OK, so if your question is about context, then I have to read through the entirety of it.

H: I understood that you read through the last day – I'm not going to drill you on this. You know where I'm going with this.

R: As I said, I haven't read this exchange.

H: Should we take a morning break?

A: OK, we'll take 15 minutes.

*(Resume at 11:02)*

H: So Dr. Rancourt, you've had a chance to review the document – what was the general subject matter on reading this.

R: OK, reading it refreshed my memory regarding the important events at that time – it implicated Mr. Stojanovic – I already told you he was co-supervised by me at the time – but it also implicated Mr. Jean-Paul Prevost – and Mr. Prevost was a doctoral candidate in my research group – the context is: Mr. Prevost wrote an email to the University community, to promote the benefits of the Science and Society course, and to express the opinion that this course should continue, etc. If I've understood the following events well, there was a professor who wrote an email to the university community to make a statement – then the VP Resources, Mr. Victor Simon, applied a certain kind of discipline vs. Mr. Prevost – Jean-Paul Prevost then asked to see the documents regarding the reasons for this discipline – Mr. Victor Simon then sent Mr. Prevost some documents – but Mr. Prevost had also made an Access to Information request which allowed him to see the same documents by another means – Mr. Prevost realized that the document sent by Mr. Simon was falsified – he complained about this and wrote to the President

at the time to complain that the VP had disciplined him without reason and had modified the document, which was something Mr. Prevost believed was not right. The President responded to him that according to him there was no problem with the document – that something had been removed, but that according to the President there was no problem with that act. Mr. Prevost was not at all happy with this situation and he made a formal complaint that Mr. Simon had modified this document – because there is a Policy called Policy 110, which allows a student to make a complaint against a professor or an administrator – so he made this formal complaint, and then, in the management of this complaint, there were meetings with the Dean of the Faculty of Graduate and Postdoctoral Studies – there exchanges between Mr. Slater and Jean-Paul Prevost regarding a way handling of his Policy 110 complaint – during this controversy, Mr. Prevost made many of these exchanges and documents public, including the exchanges with the President, and he wrote about these exchanges on a web site – so it was known by the university community – and you see at the end of the document, the professor E. Appel(?), who I don't know personally, but who wrote his reaction to the exchange – it shows that other professors were involved – his reaction is very interesting, it's at the end of the document – this professor said “University administrators should focus on issues and projects that raise the profile of the university instead of going after a PhD candidate who is trying to express himself in a reasonable fashion... my advice, leave JP Prevost alone, and allow controversy to flourish, because a university without debate is not a great university” – so this shows the spirit I was referring to earlier, and this shows at what point Mr. Prevost was disappointed with his meeting with Mr. Slater – so he writes to Mr. Stojanovic and says “Hey dude, do you think the administration called an emergency email...” he asks Mr. Stojanovic his opinion. At this point, I wasn't part of the exchange – no, at one point I come into the email chain in which I describe, in a forward – but by and large I didn't know what was going on – from memory, when Mr. Stojanovic responded I was put in CC, I can't be totally sure – Mr. Stojanovic responded “JP, the reason for their meeting has crossed my mind...” – then his 2<sup>nd</sup> point is “FIPPA!” – then his 3<sup>rd</sup> point is “burn something!”. Then I respond, “I agree with Severin, burn something but not my lab” – so the context of this, from what I understand, is the following: the message from Mr. Stojanovic of Aug. 16 – he makes 3 points – first he expresses his own questioning about Mr. Slater's cancellation of a meeting – secondly, he responds to JP about a FIPPA request that JP proposed to fair – and I think, this means that FIPPA is not a tool that works very well for finding sensitive information – and his 3<sup>rd</sup> point is “burn something” – and my interpretation is that means it takes more direct action to get something to change – so I believe this means, rather than spending months and months with FIPPA, that he is expressing his opinion, and it doesn't mean “burn something”, that would be ridiculous, it means “do something more than FIPPA” – then when I respond, I agree with Severin, and say “burn something, just not my lab” – it's obvious it's a joke, but I agree with Severin and use his form – my meaning is to do something more direct – maybe it means “pay attention”, but I think it's only humour, nothing more. In my opinion that's the very nature of this communication. I can add that this entire exchange that I have described here, I wrote a blog post about this question on my blog U of O Watch, and the blog post had a title along the lines of “VP falsified a document and lied”...

H: Mr. Arbitrator, you know it's not my practice to interrupt – we've gone far astray and I'd ask you answer.

R: The reason is that...

A: OK, but the question you were asked was...

H: Do I understand in light of your fulsome answer that your exchange was on an important subject involving the conduct of the UofO?

R: Yes, but the two emails at the end were more an expression of frustration with doing FIPPA requests, and the fact that this meeting was planned for months and was cancelled. So, I think the last two emails, in particular were an expression of frustration about these aspects of the situation.

H: Sir, my question was quite simple: in fact, could have been answered "yes" or "no" – do you agree with me that the exchange you were having with this student was related to an important subject involving the UofO.

M: Actually the question was "the subject matter of the exchange was" – if it's whether or not these emails relate to an important matter, that's a different question.

A: Now, could you repeat the question?

H: In light of your explanation of the subject matter, would you agree with me that the subject was an important matter involving the conduct of the UofO?

A: Was an important matter for the UofO?

H: Involving the conduct of the UofO.

M: So the witnesses answer was "yes, generally, that is true, but specifically, it was about frustration with this individual about FIPPA and the time it was taking to solve this problem."

H: Fair enough, I'll move on. OK, why didn't you use your uottawa account? Why did you use your Gmail account?

R: Um, I think I was put in Cc using my Gmail account, and I responded from there. If I had been put in Cc with another account, I would have responded with that account.

H: Now do you have any record in this document that you were Cc'd on your gmail account, or do you just have a remarkable recollection of that fact?

R: I'll examine the document – when I read the document, I understood that I was brought into the discussion after there had already been a number of exchanges – so I imagine that it continued with the same email address.

H: So your evidence is, after giving us your affirmation, is that this exchange where you say “I agree, but don’t burn my lab” just happened to be on your gmail account but not your uottawa account, which of course would have been more accessible?

R: Accessible by whom?

H: You tell me.

R: No, you asked the question.

H: ...

R: It’s obvious that this is a communication where there was a language used which expressed frustration, with people I knew well, I would not have hesitated. If you think that someone could have misunderstood that I was suggesting to set fire to campus but not my laboratory, I think you are wrong.

H: Was it also a coincidence that when you were exchanging with the very same student, Mr. Stojanovic in reference to Immortal Technique “lets’ get in touch with that nigger, let’s blow Ottawa wide open” – was that also...

R: I don’t have that exhibit in front of me.

H: It’s on the screen, sir.

R: OK, I have the document, allow me to re-examine it. OK, so, in the document you are referring to one email in particular in this document. And it’s on the screen. And we see that it comes from my gmail account. But we see that it was simply added in text to another email. It’s in the text of an email, it’s not really an email. It’s in the text of an email that was sent to my account dgr@uottawa.ca. and your question is? I already explained that I tried to separate things such that my university account was used for everything related to research and academics, and that my gmail account was used for other things such as exchanges with students about things other than research – this includes as well, I’m not sure how often, questions about governance of the university – there was a mix, and other matters. And there were many – you can see in this document a mix of the two addresses.

H: Well let’s turn to another email that perhaps by coincidence was sent to your gmail account – exhibit 141.

A: 141?

H: Yes.

R: I don't have it. Ah, yes I do. Yes, I didn't say in your question...

H: I haven't posed a question yet, sir. Just asking you to turn to it. It's a 1 page document.

R: OK.

H: It appears to be sent to a group "small claims Ottawa, google groups.com" – can you tell us in general who comprised that group?

R: I don't remember who were the members – I would have to guess. But, it would mean that my gmail address was part of this group and that's how I received this email.

H: Sir, you signed up for that group, presumably you made a decision to use your uottawa account or your gmail account, no?

R: Yes and no – someone might choose to include another person in a group and choose which email to use – or a person can choose to join a group – but I know I was a member of several of these groups – it was a very common form of discussion – there were google groups, there were Yahoo groups, all these groups operated under the same function – people could add you – it was a bit like the precursor to Facebook, if you like – I don't know who the members were, etc.

H: So, could you even confirm to us that there were a number of students who were part of this group, or does your memory just fall off at that point?

R: No, I know that there were surely students in this group, I see Mike Cheevers here – I knew he was either an elected representative or an employee of the undergraduate students' association – there were surely students, yes.

H: And, just turning to the content of your email, you say "wow Mike, thanks for sending that link, they're using effective methods proportional to the problem".

R: Yes.

H: We have the link you're commenting on, it says "Protestors trash Premier's office" – about 2010 Olympics.

A: Is that part of an exhibit?

H: That's exhibit 142. Did you need a moment to review the article about protestors and trashing the Premier's office?

R: No, I can imagine the content given the title.

H: Well, I just read to you some excerpts before I pose a question – “once the door was open, all 3 barged in – they proceeded to break objects, throw things to the ground” – “there was a lot of furniture overturned, a fax machine damaged, the two staff members were visibly shaken and frightened for their safety” – were those the methods you were referring to when you said “effective methods”?

A: Just a second.

R: No, I don’t think so – to the best of my memory, I didn’t read the article. I saw the title and the photo – I would have seen the title and the photo and responded spontaneously – kind of like how we comment on any story which is a bit extreme in the media – it’s what would be called “small talk” – “wow, Mike, thanks, that’s activism, etc.” – it’s nothing profound, it’s just a comment – that’s it. What I mean by that is that to have said such a thing “these are effective methods” – to have said such a thing is because this group, which is concerned about indigenous peoples’ rights in Canada, it’s a group about that I believe from what you’ve read to me – the idea is that these are effective methods because they’ve succeeded in having media coverage – they’ve succeeded in getting a photo in the media, in having the public eye and the eye of those responsible in society on the problem – it doesn’t mean it’s recommended – one could say it’s a form of civil disobedience, that could be argued – it’s in this sense that I wanted to express this point of view – but it was just a reaction, what you’d call “small talk” – I know that Mike Cheevers is someone who was in my course in 2005, and with whom I became friendly. So it’s small talk, because I know Mr. Cheevers. That’s it.

H: We’ll turn to exhibit 143, which is an exchange of emails with Philippe Marchand – was it another coincidence that you just happened to be using your gmail account on this occasion.

R: It’s not a coincidence – it’s a distinction between courses research and everything else.

H: You wanted to distinguish on the basis of research is what I picked up?

A: My understanding is that you wanted to distinguish between what related to courses and research and all the other subjects that were not included in courses and research.

H: So just to be sure, Dr. Rancourt, that’s the distinction you made in deciding to use your gmail account instead of your university account?

R: Yes, but there was a lot of overlap – as I said in the examples I gave, it would often depend on who originated the email exchange.

H: On this document, please explain what you meant by these words “if they were to allege that our exchange of information was suspect, then we should hit them hard...”

R: OK, I will have to take some time to review the document.

H: Take your time, sir.

R: OK, I've read the 3 emails in this exchange, but I forget your question.

H: I just want to give you a chance to explain what you meant by those two passages that I read "slightest complaint or allegation that our exchange of information was suspect then we should hit them hard" and further down, "this crap...".

R: You see that Philippe Marchand initiated this email using my gmail account – and further down you see that there is a mix of things in this email – we are discussing an academic paper we were writing at the time about our research – in my response I respond to his question, I say "I will continue to review your AM paper" – AM means *American Mineralogist* – but here Philippe is saying "would it be too suspicious" for him to respond to an email to Bela Joos – and I don't understand what he says that, and that's what I wrote – then I wrote that it was "normal for us to consult on the broad issue of Slater and FGPS – if they were to make the slightest complaint or allegation or insinuation that our possible exchange of information is suspect, then we should hit them hard" – and what I mean by "hit them hard" is that we should complain publicly and "punish" them, in quotations, and communicate with the media and the public at large, perhaps with members of the university community, in order to explain that the University would go so far as to interfere in communications between professors and students, where they have no right – and so "we should hit them hard" means, and in the next paragraph it says "you could write a letter to *La Rotonde*" – that's the student newspaper on campus – so "hit them hard" means denounce in the media, etc. And then where it says "this crap needs to be changed" – it means, to denounce this kind of thing in the media so that the administration's behaviour will be improved. That is the meaning of these words.

H: Just one further subject to cover in a similar vein. Before I do so, I want to hearken back to a piece of evidence you gave earlier. You were attempting to draw a distinction between some of the aspects of anarchism and your approach, and you made the comment "it must be set apart from the encouragement that youth incite to violence" – do you recall that?

R: No, I think that the primary goal of that conversation was – obviously I don't remember my precise words, but in my memory I made a distinction between Anarchy, the political philosophy, which is an academic area of study – and the common sense of the word anarchy, which means "chaos", and which is not at all an organized area of study and thought – and so I argued that you used the word by using the street meaning and while avoiding the larger meaning – that was the sense of what I said earlier. And certainly, I can add that that does not have anything to do with – Anarchism does not have anything to do with inciting youth to violence – it's inconsistent to say that, because even "inciting" is not something that is done in



Anarchism – the democratic model is such that opinions are expressed, etc. and not to incite. So it surprises me that I would have said it as you say now.

H: Thank you for that clarification, just on that subject, I want to turn your attention to a Youtube video you posted on your website in 2007 – I think we can play it for you and for the Arbitrator.

M: Does it involve sound?

H: Yes.

M: What I'm going to suggest is that we put the microphone near the computer.

H: Thank you for that suggestion. New test of our electronic capabilities here.

R: Could we start by looking at the blog article before the video, so that we can have the context of how I placed this video within a blog article?

H: Why don't we go ahead with the video – your counsel can speak about the article in re-examination, I'm not interested in that.

R: The problem is that without the context...

M: I have a suggestion. Why don't we watch the video, then if Prof. Rancourt wants us to look at the context let's do that, before questions are asked.

H: OK, that's fair.

A: I have a question, my computer is talking to me and giving me a message "use debugger" do I do that or not?

D: No.

A: OK, so this is entered as exhibit 149.

H: Are we ready to play it, sir?

A: Sorry, I'm still being asked questions – so I have to answer "no" every time.

R: I'll just go to the bathroom quickly, if that's alright?

*(Short break)*

H: Are you all set to go, sir?

*(Video plays, sound heard through speakers)*

Video words: Through the best of times, through the worst of time, through Nixon and through Bush... molotov cocktails.... co-conspirators... I'm an Anarchist...you're a spineless liberal... 8 hour day... streets of Seattle... all alone... Red, White, and Blue on the 4<sup>th</sup> of July while those fireworks were exploding, I was burning that fucker and... parties... backseat of your father's new Ford.... jackass... solidarity is a four letter word... top of my lungs... I won't take your hand and marry the state... cause baby I'm an Anarchist, you're a spineless liberal... we march together for the 8 hour day in the streets of Seattle then you left me all alone, all alone.

H: Now, my understanding, Dr. Rancourt is that you'd like to review the materials on your blog linked to this when you posted this video.

R: Absolutely, otherwise it's just a citation made in an article.

A: You want...

R: Yes, I think they will show the article where this video was integrated, or somehow cited.

H: I've seen it on that blog, you've confirmed that – over the lunch hour we'll search.

R: Ohhhh – there are hundreds of articles on my blogs, I don't remember this one in particular – do you know which blog? U of O Watch, Activist Teacher? Was it the blog about the radio show “The Train”? Was it another one? At least direct me to which one of the 3 or 4 blogs, that would help me.

H: Well sir, I'm somewhat taken by surprise, I thought you had an awareness of what you posted on your blogs.

R: I suspect it's from the blog TrainRadio and it's about my radio show – I interview many people, and write short summaries of what it was about. If you can confirm this for me, that would help me.

H: Sir, that quite frankly is not my task, all you have to do is confirm that you have placed this on your website.

R: I can respond very simply – I can't confirm that I have either “embedded” this in my blog or cited it – I can't do this from memory, but it is possible, that's why I'm asking you. I remember seeing this video, and it is a video that is very widespread on Youtube.

H: I want you to confirm you prepared this and put it on your blog.

M: The response was “I can’t do that”.

H: I’ll withdraw from that. I want him to say whether he created it and put it on Youtube.

R: No, that’s very easy to answer.

A: So we’re narrowing the question – did you refer to this video on Youtube in one of his emails, is that it?

H: No, did you create the video and arrange to place it on Youtube so that it is accessible to anyone?

A: Did you place it on Youtube?

R: The verb would be “upload”, to use the precise word. No, I had nothing to do with the creation of this video, I have no idea who made this video, and I – I may have – I don’t believe having uploaded this video on Youtube, and certainly I was not the person who first made this video available on Youtube – but, it is possible, because in Youtube you can click that you “like” a video, or add it to a thematic list of videos – it’s possible that I did this on Youtube, but I can’t confirm that either, I don’t have a recollection of that.

A: You said you can....

R: Yes, in English it’s called “like” – there is what’s called a “like” button – we can choose to add this video to a list of videos that follows a theme – so we can create a theme and put this video in the theme. It’s like creating a list of songs you like. I don’t remember whether or not I did that with this video. I can’t confirm that. But it’s certainly not me who introduced this video onto Youtube. I repeat: it’s certainly not me who introduced this video to Youtube, and I have nothing to do with it’s creation.

H: Sir, just to be fair: the title of the video is “Anarchy and Anarchism by Denis Rancourt” – you might want to check that.

R: That might be the title of a list.

H: OK, well I’ll ask you to respond why you titled it that and sent it to your students.

A: So, what you say is that when you go on Youtube, the subject matter, or the theme?

H: Uh, the title, if anyone wants to look at it, the words are precisely “Anarchism and Anarchists by Denis Rancourt”.

R: *(Walks over)*. Can I see it on the screen? OK, I can respond to that question. I think you will understand better once I give my answer.

A: Can I see that?

H: You'd have to go on the internet. The title didn't show up on this version for some reason.

R: I think when I explain this it will be very clear. Can you tell me exactly what the question was?

H: You'll see on the screen that the video we just viewed had a title "Anarchism..." can you explain that?

R: OK, so we're on Youtube, we have Youtube open, and Mr. Harnden opened a thematic list that exists on Youtube, and this thematic list contains several videos – and this thematic list is called "Anarchism and Anarchists" and this thematic list is not necessarily unique, there may be others with the same name, but this thematic list was created by me. Another word for a thematic list might be a repertoire or a folder – so I created on Youtube, a folder called "Anarchism and Anarchists", and in there I selected videos that already existed on Youtube, and I placed them in this folder. It's just that the address linked to their original location is placed there. *(Draws diagram to explain placing links in folder to Arbitrator)*. So this folder can contain videos on any subject at all, and contain any video that already exists on Youtube, and Mr. Harnden is wrong to say that the video we see is called "Anarchism... by Denis Rancourt" that's false – that's the name of the thematic list – the video is called something entirely different – the title of the video is below, it is "Against Me! Baby I'm an Anarchist" – that's the title of the video – the thing Mr. Harnden is looking at is the thematic list and its title – so I have nothing to do with this video, I simply added it to a folder, if you want to call it that.

A: So if I click on the theme, I should get more videos you placed there?

R: Absolutely. I have some themes with many videos.

M: I would propose I send the hyperlink and that would simplify things.

H: Fine, because I'm also going to refer to one that shows the Glebe firebombing, which he included.

A: Shall we stop now for lunch?

H: I'm content with that, I want to ask witness if he posted video of Glebe firebombing. So this is a list of videos you uploaded to Youtube?

R: No, I never said that, in fact I said the opposite – these videos already existed on Youtube, and I created a theme with links to videos that already existed on Youtube. Are we in agreement now?

H: So you went through an exercise of going through these videos and putting them here for the world to see?

R: No, I didn't do an exercise, it's the normal exercise of watching videos, and when we see one we like, we can put it into a theme and collect them. So when I see one I like, I can put it in that theme. I have about 20 themes, and when I find a video that I like, I put it in one of those themes. But I can tell you with certainty that the videos you see in that theme were not created by me or uploaded by me to Youtube.

H: What about the header? "Anarchism and Anarchists by Denis Rancourt" Did you do that?

R: I chose "Anarchism and Anarchists" and Youtube adds the qualifier "by Denis Rancourt" to indicate that it's a theme that I created. So that's done automatically.

H: Can you confirm that within this theme you included the video of the Glebe firebombing?

R: No, not from memory, but if you say so I would accept it – I can't confirm from memory.

H: Perhaps your counsel could show it to you, because it's a bit tricky. Or we can take the lunch break.

R: Are there others?

H: No, I think the point is made with those two.

A: We'll break for lunch now, until 1:45.

*(Resume at 1:50)*

H: Now before the lunch break, Dr. Rancourt, I mentioned I was going to ask you if you included the Glebe firebombing video on the list of videos on Youtube?

R: Yes, so I can confirm that on that list there were 9 videos, and that was one of them. Now, there's something I thought about over lunch in response to one of your questions – I said this morning that I went to observe Mr. Claude Haridge in Court once – once or more than once – and I have remembered that it was a charge other than that which you mentioned, it was related to a demonstration – it was on that occasion that I went to observe Mr. Haridge, and on that occasion that Mr. Haridge was beaten by the police – I was interested in

that, it was not about the criminal charge about bullets buried. That's it, I remember more precisely, and I wanted to give that response.

H: Since you raise Mr. Haridge again, I want you to confirm that Mr. Haridge was charged with respect to the very ammunition, were you not?

R: I don't know at what point I knew – I knew at some point, but I don't remember when – I was aware – I must admit that when you mentioned it last week, I went and researched it on CanLII, and read part of the decision to see what it was about.

H: The reason I asked is that when I first raised the subject of Mr. Haridge and the ammunition, you said you didn't know what I was talking about, do you remember that?

R: It's because when you said "buried ammunition", that's what confused me, because I was surprised to learn these details about burying it at a location away from his house, and that it consisted of thousands of bullets, etc., because I think that all I'd heard was the official term "unlawful storage" – so it surprised me when you said thousands of rounds were buried, because in my mind was the phrase "unlawful storage".

A: So, you were surprised by the number and the location?

R: I understood from the beginning that it had to do with ammunition stored improperly at his house. The details about the forest of pines that were searched – I knew nothing about those details – I read about it for the first time when I read the decision of the Court on CanLII.

H: Well, Dr. Rancourt, I'll suggest to you that you're being less than honest to us, and in support of that I'll ask you to read this exchange of emails with Mr. Haridge from back in 2011.

R: OK. Uh, where is ammunition mentioned in this document?

M: We don't have this.

H: You gave it to us this morning, we don't have it in a form for the arbitrator yet. It begins Sept. 21, 2011. 2:32 p.m. – "Hi Denis," from Claude, refers to "the ammunition that I disposed of so far from town"

R: Can you tell me which line in this paragraph – ah, OK. OK, you're right.

H: Just hold off on your comments until I provide it to the Arbitrator.

A: Exhibit 150.

H: Can we begin with your confirming this is an exchange of emails you had with Claude Haridge in Sept. 2011?

R: Yes.

H: Would you agree with me that the subject matter was his ongoing trial about storing ammunition outside of Ottawa?

R: No, I would say that he was asking me to be a character witness in his trial. So what I took from it was that it was a request that I would be a character witness for him before the Course. I admit the precise charge was not something that I paid attention to, even when I read the decision in CanLii last week, I didn't remember this – that's a lapse on my part, and I apologize – but I think this was a request and then we had an exchange, I brought up how we knew each other, and we discussed that we had met each other in the SC11101 course and in Cinema Politica – I said I had good memories regarding him in connection to those activities – in the end there was no follow-up on this. There was no follow-up beyond this exchange of emails. But, you have indeed found a memory error on my part. But I do remember that a once went to see him in Court and it was not about this charge – it was about the CANSEC affair. I should have remembered because I've just given you these documents, and I produced them this week, but I did not pay attention to that precise point.

H: So you're telling us, sir, that you weren't trying to mislead the Arbitrator when you told us you weren't aware of Mr. Haridge burying ammunition in the forest, which is rather unusual?

R: Exactly, I said I didn't remember this email, and didn't remember this business in the forest, because I think I kept my original impression that it was at his place, because for me it wasn't an important fact – the fact that he asked me to be a character witness, the fact that I observed him once in Court about how he was beaten in a cell, I remember that because it really shocked me – but these other points are memory errors. I have no reason to hide that either, it's just memory errors. I receive many letters from people asking me for reference letters, e.g. from students, etc. – I don't recall the details of the request, I go straight to the relationship and do the task of producing the reference.

H: Dr. Rancourt, I suggest to you you didn't want to produce to the hearing your closeness to Mr. Haridge and you were reluctant to share that Mr. Haridge buried this ammunition somewhere north of Ottawa?

R: No, you didn't ask me what links I had with Mr. Haridge, I don't believe you ever asked me that – so I can't see how I could have hidden the links if you've never asked me the question. Regarding the ammunition in the forest, it wasn't something that I remembered, I maintained my initial impression and that's it. I have no reason to hide the rest. I'm just trying to respond to your questions as best I can.

H: I'll read to you something you said to us last week – I was asking whether there was just that one email – you said, it was rare that I would send an email directly to him.

R: Well, that was at the time – what time are we talking about? 2011? This was an exchange asking me to be a character reference for him. Because it was not an email related to anything – I had no reason to look at it or to refresh my memory, or anything. You've asked me recently for all the emails that I've exchanged with Mr. Haridge, not just those that were pertinent.

H: Now could you please confirm that the video of the Glebe firebombing is the same video as that referenced at exhibit 131 in this proceeding?

R: I can't confirm with certainty, I would have to compare the two. Probably, both of them are on Youtube. I don't know, there might be 10 versions of that video created. But certainly, the beginning is the same, so I would tend to believe that it's the same video.

H: We already have Ex. 131 on the record.

A: What page are we on on 131?

H: Right on the first page, you'll see "Black Block" and a user on the blog – Dr. Rancourt can correct me if I'm wrong – can simply click and play that video.

R: So, I don't have any reason to believe they are different, but they could be different.

H: Thank you, we can move on to another matter. And just to orient anyone, in particular the Arbitrator, my questions now will relate to the – might be useful to reference Ex. 132 just for orientation. And my question at this stage is simply "do you recall receiving that letter from Dean Lalonde on or about Dec. 2007"?

R: Yes, it's surely a letter I would have received from Dean Lalonde.

H: Now, just so we can start the narrative and move forward chronologically – please refer to Ex. 34, do you recall receiving that letter from Dean Lalonde?

R: Yes, that letter is about the course 1722 – sent in Autumn 2007 – but the course was held in Winter 2007 – so this letter was sent a long-time after the end of the course. The time from Winter to Autumn – so this letter in which the Dean tells me, for the first time, apparently, that he has concerns about my marks in my courses, was sent many months after the course was approved by the Faculty and the Dean was informed – I found out about later, thanks to an ATI request – the Dean was informed by the Physics Dept. Chairman, Mr. Richard Hodgson, at the beginning of the course, in Winter 2007, that he wanted to indicate to me



something of importance in this course. I have documents to support this if you wish. It seems clear to me that the Dean was aware of a possible concern by the department as of Winter 2007 – he allowed the Winter to go by as well as the Summer before finally contacting me in September 2007. The administration never complained about this course or how it was evaluated while it was ongoing – and if my memory serves me...

H: Well, the issue the Dean was raising wasn't complicated? It says the average before you was between... and... but now it's ... (high) – isn't he just saying "I'm concerned about this, can you give me an explanation?"

R: Well, there's a context of what could be called the conflict between myself and the Employer, and this context could be described in the following way: I'm of the opinion that I was being examined constantly and in every way – I mean, not necessarily in ways that would be valid – I feel that my academic freedom was not respected. It's in this context of what I could call – the word is too harsh, because it's an academic environment – a "harassment" by the administration because the approach was too severe by the administration – I was very open to having a discussion with my Dept. Chair, or with the Dean of the Faculty, rather than simply receiving this letter from the Dean. When the Dean says "you have committed something that is worthy of discipline" – he waited 8 months, he made his graph, and then he suddenly communicates to me in this way. So for me, as a professor with more than 20 years experience, I know the course was a great success and I was very appreciated – in my view this was shocking – the Dean did not choose the best way to address the situation – I would have preferred the Dean to speak to me informally and in person, rather than to immediately refer to paragraph 32.. of the collective agreement – for me this letter was not a completely just administrative action – that was my perspective at the time – so I had the reaction that I had. I had never been treated in that way in my career. My teaching and my pedagogical choices, my choices of research had always been respected – it was only in the last years that I started to feel these heavy-handed tactics – only after the Dean started writing to me in English – only in those last years – I often asked to meet the Dean to talk about this – if I didn't ask him for informal meetings 20 times, I didn't ask for him once – I asked him many times for any kind of meeting – by telephone, in the hallway, in the office, so we could speak one-on-one, so that I could explain what I was doing to him – but no, these were always strong-arm tactics like this that took place – I was not receptive to those methods.

H: Did you take issue with the proposition in his letter that you had an obligation to evaluate students' performance objectively?

R: Uh, we did not have any exchanges – I don't think we have the opportunity to debate that because, if I remember well, I perhaps refused to go to the proposed disciplinary meeting...

H: Perhaps my question wasn't clear enough – what I'm asking you was did you take issue at that time or now that that's an obligation of a university professor?

R: OK, if I object to the particular phrase – please indicate it to me?

H: He says in the last sentence of the 1<sup>st</sup> paragraph "I'm concerned that you fail to evaluate students' performance objectively".

R: No, I agree with the statement that we must evaluate in an objective way aligned with the norms of academia and with the rules of the Senate. I've never had problems with that, I've always explicitly said that that's what I did – the word that could be ambiguous is the word "performance" – because "performance" could mean, in the Dean's mind, in relation to an exterior, imposed criterion – so this could contrast with a student-centred evaluation, based on the performance of the student in relation to himself. Both approaches are completely legitimate and we can have a mix of them – I think the Dean would have had a perspective more or less conventional regarding an evaluation in relation to the exterior – uniquely that kind of performance – so we would have needed to have this discussion, but we were never able to.

A: You say... only the conventional approach?

R: The conventional approach only takes into consideration the performance in relation to external criteria.

H: Now, in the preceding sentence, he made reference to an attached graph. Is that what's shown in Ex. 35?

R: It resembles that certainly.

H: Well, in light of the contents of the graph, would you not agree that given the dramatic increase in the marks assigned in your course, it at least merited an inquiry into what had happened in the course?

R: No, I don't agree that the method the Dean used was a good method. I think the Dean knew these marks in the Winter 2007 and had 8 months – he knew that a different method was used in that course at the beginning of the Winter 2007 semester – so he had 8 months to have a discussion with me, rather than to threaten me with discipline 8 months later. So the graph on its own, in my mind, doesn't justify the manner in which the Dean managed his concern.

H: Do you agree that the graph correctly represents your marking scheme, beginning in 2003 and moving forward, and then shows a marked departure from the average marks in your 2007 course. Do you not discern that on the graph?

R: OK, I don't agree with what you said, and I'll explain why – the graph is drawn in such a way so as to put an emphasis on the change, because the marks begin at zero – if

the axis was moved it would look different – it's one of the first things we tell students to watch for, in terms of people who want to put “spin” on things – secondly, there was a change in pedagogical method in 2007 – also, it wasn't the same course, we already spoke about that – before 2006 and after, the course code changed and the content changed – 1702 vs. 1722 – so there were very important qualitative changes between 2006 and 2007, and the Dean was aware of this – that the course description was different and that I used different methods in the course – another important change, if you look at Exhibit 119 you will see that in previous years there were very many students, e.g. 200, 120, and then 50 – so we went from 200 to about 150 to a smaller number, actually it was between 45 and 50 – it was a class that did not need to be done in an auditorium – the previous course was in a large auditorium that is less propitious to a good pedagogy – so this was in a smaller room in the Engineering building, and it was easier to have a more intimate connection with students and follow their progress – so the Dean was aware of all these changes between 2006 and 2007, but his first reaction was to do this simplistic graph and accuse me of something that merited discipline, instead of having the reaction “what could have changed between 2006 and 2007 – let's go see” – and he would have found many things, and then we could have had a discussion going to the foundation of the question, and that would have been very productive. So I don't agree that the graph in isolation is a good reason to have led to that reaction on the part of the Dean.

H: Now Dean Lalonde when he testified, provided us some extra evidence – Ex. 36 – he provides us with another graph involving some other courses. Can you confirm that Prof. Czajkowski was at that time another professor in the physics dept.?

R: Yes.

H: And the classes referred to PHY.... how did they compare to the course PHY1722 in terms of content?

R: If we talk about the course description and we ignore pedagogical methods – I think PHY1322 and PHY... are the anglophone versions and correspond more or less – so the 3 means English and the 7 means French. But, I must indicate that in the physics dept. there is no coordination whatsoever that forces the anglophone and francophone courses to be the same – in terms of exams, pedagogical methods, marks, etc. – none at all – these were considered to be completely separate matters at the time I was teaching. If one course in particular had to be broken into distinct sections, it was possible to have a correspondence between different sections of the same anglophone course, for example. But not between French and English. I know this happens in psychology, for example, but never in physics as far as I know. There's also a policy at the UofO that says that professors must not normalize their marks. Professors do not have the right to impose a systemic change to their marks in order to fulfil the demands of the Dept. Chair or anything else. Normalization of marks, it's called “Bell-ing the marks” – this is not an allowed procedure at the UofO – there is a precise policy that prohibits this. In other words, once a professor has chosen his method of teaching and evaluation, and has

determined his marks, using this method, the professor does not have the right to systematically change those marks.

H: So we see this remarkable distinction in the marks assigned to the students in 1322 and the marks which you assigned in the same year in 1722.

R: Yes, we see a difference.

H: So, it would be tremendous good fortune for a student in 2007 to have opted to have taken the course in the French language rather than in the English language, it would seem.

R: Your question could be interpreted in two ways: if you mean that students had a better chance to work harder, to learn more, and to have a higher mark in a smaller mark, I think you're right; if you mean that the student would have benefited from the pedagogical method centred on themselves, you're right. If you mean something else, that you seem to be insinuating, I don't agree.

H: So do I understand correctly that you say there were 2 principle factors to explain the difference in the results – the size of the class, and the incredible pedagogy that you employed with your class?

M: Before we get into this – I don't know that the witness has any way to evaluate the marks in the other class.

A: The witness just gave as an answer that as far as he is concerned there are a few interpretations: 1) using his method for evaluation and the 2) the fact that it is a smaller class.

M: Actually, I'm not sure that he said that. It was worded in a rhetorical sense, "it was tremendous good fortune to have taken the class in 2007".

A: Yes, and he said the method was different because it was centred on the student and the class was smaller, and then if you mean other things, I don't agree – I'm not implying that because the method was different and the size of the class was different that the result will be different. That's what I got from his answer.

M: Maybe it might be worthwhile for the witness to leave for a moment, because I'd be more comfortable saying what I'm about to say in that way.

*(Witness leaves)*

M: My – what I believe Prof. Rancourt said was – he was asked if students had good luck to be in his class – I don't think he ever said "that explains the difference".

A: He didn't see it that way – the way he answered suggests to me that the difference lied in the teaching method and that the method was not the same in the other course.

M: I just want to be clear that I'll be arguing it's in response to the question "the students were really lucky to take the course in French".

A: You can argue, and you can ask questions to clarify also.

*(Witness re-enters)*

H: Mr. McGee will correct me if I'm wrong, but I believe the question I put to you was "is it the case that your explanation about the difference in the marks you assigned in 1722 and in 1322 can be attributed to the different size of classes and your superior pedagogy"?

R: Um, I don't want to say that the pedagogy I used is superior to that of another professor – that's not what I said – all I said is that the pedagogy I used, applied to this group of about 50 students, gave this result. I didn't follow what happened in the other course – I know this professor, his office is beside mine, he's a professor who I appreciate a lot – he described his method to me, we had occasions to compare methods, etc. – but I don't remember if the professor – yes, he taught in the same year as me – I'm not surprised that his method, with the enormous classes he had – the English course was much larger than the francophone course – maybe .... – I think the English course is much larger – I don't know exactly

H: I have the number at 172 -- did you say 1000?

A: 1200.

R: That's very large because that doesn't fit in one auditorium.

A: You said you didn't follow what happened in the other course, Prof. Czajkowski – you had opportunities to compare your methods...

R: To discuss methods – I don't think I really informed him about my method, but I knew about his method – I know that he used a completely conventional method – that wasn't my preoccupation – that was his choice – I made my choice. So I think that the size of the class is a factor, but the main factor is the method. And it's important to realize as well that the mark does not mean the same thing. It's comparing apples and oranges – in the traditional method we evaluate the student's capacity to produce a desired response – in the method I used, I evaluated the individual progress of the students – their work, their effort, and their understanding, on an individual basis. So the benchmark is the progress of the student, in relation to their starting point over the progress of the course, while the traditional method does not take into account the real knowledge of the student at the beginning of the course – a benchmark is fixed independently of the student's knowledge and tries to satisfy this benchmark by assigning

specific tasks. Conceptually, these 2 methods are the antitheses of each other – in pedagogy we consider these to be two poles – student-centred at one end, and external criteria at the other end.

A: Student-centred.. and the other?

R: External criteria or external standards. The problem is that the external method does not work – it does not give rise to a comprehension of physics, even with students who have a very high mark. So it's a method that fails the student. That is very well known – it is the great problem in science pedagogy. My responsibility as a professor is to maximize learning – the pedagogical method, and that includes the marking, is a method to achieve at that goal. There is nothing – nothing – in the collective agreement that says marks must have a certain value. But the collective agreement says very clearly that the professor must stay up to date with advanced pedagogical methods – that the professor must advance professionally in his teaching. This is written in the collective agreement, and I think it is clear that the pedagogical method, and this includes marks – which are part of the tool to optimize learning, etc.

H: Dr. Rancourt, do you see any obligation on this part to link the mark to the student's understanding of the curriculum that you're teaching – or does this student-centred approach move from one particular level of understanding to a higher level of understanding particular to that student?

R: The material will be seen and, in my experience, taken in with a higher level of understanding using this method. The students' learning was clearly better in the years in which I used the student-centred approach – their motivation was improved, their understanding was improved, and the amount of work they did was improved in the Winter 2007 semester. So, I think that the only relevant question is – did the students learn the most possible in order to advance in their curriculum, and did the professor make the best possible attempt to maximize that learning? And this was my first preoccupation – to do exactly that, by following the curriculum.

H: With respect sir, you're attempting to artfully dodge the question – you speak in terms of moving the student forward, and the professor – my question was focussed on curriculum – was it your obligation to grade those students based upon their learning of the curriculum of that course? That's a very simple question.

R: I think that the question is not correct for the following reason:

A: Um... you can think it's not correct but...

R: My response will answer the question (*laughs*). If the student learns 60% of what is in the curriculum, does that mean that the professor has failed the student? No. The professor does not have the responsibility for students learning the curriculum – that's absurd –

the professor has the responsibility to optimize and maximize the learning of the curriculum using the best methods that he or she can find. That's the professor's responsibility

H: I think an afternoon break might be appropriate, sir.

A: We'll take 15 minutes.

*(Return at 3:29)*

H: Dr. Rancourt, I'll refer you to Ex. 38. Please read through the letter. It's an email, actually. When he says "I offer to clear up any misinterpretations you have..." why did you pass up this opportunity?

R: I've already explained to you that this paragraph in the collective agreement – that this paragraph says that everything we say in that meeting can be used against us by the employer – I checked with my union and they confirmed this. So this was not a mediation meeting – it was not a meeting arranged in an informal manner – it was something that had the goal of collecting information, while the Dean had already said that I had done something that merited discipline. If we look at the collective agreement, it says the Dean must explain the reasons for which he has concerns. From memory, this article explains that the Dean must express his reasons for which he has developed concerns – in the place of that the Dean simply said to me "I have reason to discipline you" and with no reason but this graph – for me this was too sudden, and it came 8 months after the start of the course – I didn't want to participate in what I saw as a campaign against me – at this stage, I felt that the university had decided to go on a campaign against me, and I still believe to this day that the letter of the Dean, written in English, was probably written by a lawyer – e.g. by Mr. Harnden himself – and that this was the result of a meeting held with the upper administration, while the collective agreement and the academic culture is very clear that the Dean must be an independent agent who uses his judgement independently from the upper administration. And I felt that this was not the case – that Dean was not at all acting as an independent agent in sending me this letter – and that he was directed by a desire of the upper administration to find one or more pretexts to fire me. At the time I did not think it could be a firing, but I thought I could be attacked in an unjust manner – I didn't want to participate in a process that, in my sense, was unjust and against the spirit of the collective agreement. But, I could add that the Dean did not order me to attend this meeting – he offered – and that's why I use the same language – the language of his lawyer – and said "I therefore decline your "offer" to clear up any misunderstandings" – so I take him on his word, he claims to offer this meeting, and I say that I do not accept this offer.

H: So you knew you were entitled to attend with a representative of your Association, or your legal counsel, whoever you chose?

R: No, that's false – I'd already asked to be accompanied by a person of my choice, and the University refused this.

H: Well sir, I refer you to Ex. 31...

R: But, in another meeting, I had the opportunity to bring a person of my choice – I don't remember exactly – I remember once I had someone who was not a lawyer, another time with a lawyer, another time there was a representative of the Union – there were many of these meetings at which I participated in different ways, and this time in particular, I decided not to participate, according to my memory, I could be mistaken.

H: Well just to confirm, Ex. 31 – here's a transcript of a meeting Aug 2007 – this was fresh in your mind – because you had met with legal counsel to discuss another matter?

R: OK, yes – but the fact that I had a lawyer with me does not change the fact that everything that was in this transcript could have been used against me. This was not a privileged situation – it was a situation where the Dean did an investigation, and my responses could be used against me. It's for this reason that I found the language of the Dean, or of his lawyer, was not very just – he “offered the occasion to”, while in fact it was a search for evidence in a campaign against me, as I saw it at the time.

H: You did understand that, in light of your decision to not attend a meeting – this compelled Dean Lalonde to make a decision on this matter without hearing the explanation that you have just provided to this proceeding.

R: Well, his decision could have been to recognize that his statements were very tenuous with a delay of 8 months, and that there was no evidence aside from his graph, and he could also have offered me a meeting outside of the context of such an investigation – because I told him this paragraph from the collective agreement was not the right approach, it was an initiation to another approach. I say “I don't believe (*paragraph numbers*)... is the proper vehicle for this” – this means “there would be a better approach” – Exhibit 39 – I say “there's no need to use harsh methods here... I would be happy to discuss collegially at a future and mutually convenient time” – so I was giving the administration to bring up its concerns in an informal setting instead of their proposed investigative meeting. I had already experienced an investigative meeting and did not like it at all. In addition, at the time, I was very surprised by this aggressive method, and I asked my Union, “is it normal to be interrogated in this way?”...

H: Excuse me, Mr. Rancourt – if you start telling us what the Union told you, you're waiving your privilege, and I don't want to get into what the Union told you.

A: What happened between you and your Union stays there.

R: I'll bring it up another way – I asked many professors if something similar had happened to them, and no one knew of such a practice – I am of the opinion that this method that was used by the Dean against me was extremely rare.



H: I'll refer you to exhibit 39 and ask you to confirm to the best of your recollection that these were the marks you assigned to the students in that class that term?

R: I believe so – I haven't counted the number of students, but I believe so.

H: I'd ask you to return to Ex. 32, please, which was the letter of warning which was issued to you. Take a moment to read through it.

R: OK, I've read it carefully.

H: Did you read it carefully at the time you received it in 2007?

R: Surely.

H: Did you understand that the Dean was very concerned about – did you get it that he was serious about this subject?

R: No, I've already explained that for me it was not the Dean speaking, it was the upper administration. My reaction to the letter was probably the same in re-reading it – it says "I have no choice but to provide you with this letter of reprimand" – I don't agree with this logic – if the Dean acted independently, he had choices – if he was directed by the administration, he had no choice – for me this confirmed that he was directed by the administration – because in the collective agreement, the Dean has the choice – he's the one who decides. And further, I noticed that he never says in his letter "I reprimand you for doing the following" – nowhere in the letter can such a statement be found. He simply says "furthermore, in the future, I request that you evaluate students registered in courses assigned to you in an objective manner according to article \_\_\_\_ of the collective agreement". That suggests that I didn't do that, but it doesn't clearly say it. Why not say, in simple language – why suggest that "if ever you do such a thing" – why not say "you have done such a thing" – I don't think it's clear language, and it's not just concerning me. The letter finishes with "any further incidences of this nature may lead to further discipline up to and including dismissal" – I read this and see "further incidences of this nature" – and think does this mean, other occasions where the Dean has nothing but a graph as evidence and waits 8 months to signal his concern? Because there could be many such occasions. I have a lot of problem with the language of this letter – I'm not a lawyer, I'm an academic, and I would like the Dean to tell me "you have done this, and this, and this", and when the subject is a possible discipline – I see that on the page and I get shocked – I believed the University was being too aggressive, because it seems to me that there was no cause here for an intervention of the type that could lead to discipline of me – it seemed completely exaggerated at the time – this was my reaction at the time.

H: Given your understanding, or assumption that perhaps someone in the administration or some lawyer, did you decide you didn't have to pay attention to it?

R: Not at all.

H: So you did pay attention. What did you do to change your practice following this letter?

R: There was nothing to change – the letter did not tell me what I did wrong – the letter said “in the future, don’t do such and such thing” and it was something that I had never done and never had the intention of doing. So there was no reaction to be had. For me it was simply – it was part of a campaign against me, that’s it.

H: We’ll break at 4:00 today, it’s 3:57.

A: There’s an agreement between you? OK, tomorrow morning at 9:30.

Wednesday, June 12, 2013

*(Continuation of University cross-examination of Denis Rancourt)*

*(Arrive at 9:35, hearing had already begun)*

H: ... Dean Lalonde's letter of 2007, which we spoke about yesterday says, "want you to evaluate students in an objective manner".

R: You began your question this morning by saying that I had difficulty understanding the nature of the warning in this letter. Yesterday I expressed my disagreement with the way in which this letter was written. My disagreement was that the letter contained ambiguities. Nonetheless, I understood the meaning of the letter. Your question is: did I read the part about "objective manner", and yes, I read that. But returning to I think, the last question of yesterday – I want to complete my answer. Yesterday you asked a question of the type – how do you explain the difference between the Winter 2007 grades in 1722 vs. 1322? – In other words, you asked me to explain the difference in marks which were given the same semester, but in an anglophone vs. a francophone course, which – I haven't checked this – but which probably have the same course description. In my answer I said that I was aware that Prof. Czajkowski used the traditional method – I didn't discuss in great detail with him about this, I didn't have the occasion to criticize the traditional method he used, he was a contract professor who was very busy and I didn't want to bother him in his very intense work – but I want to complete my answer by saying the following thing: regarding the high marks in 1722, my answer is: there's nothing to explain in relation to the anglophone course because each professor is responsible for his pedagogical method and his marks in his course, and I don't know the details about how professor Czajkowski arrived at his marks or what the benchmark was – but that is not at all relevant because these are professional evaluations by two independent professors – and this is really the important point and speaks to the underlying assumption in your question that is in your view related to the difference between the marks in these two courses – I firmly believe that when marks are high or low from the perception of an administration, that does not consist in itself of a cause of discipline – at the most this could cause an administrator to speak to a professor, but it cannot be a cause of discipline – this is why this letter shocked me so greatly – when I saw the graph that Dean Lalonde prepared, I was shocked that one could compare the marks from one course to another and to suggest from that that it was cause for discipline – in all my understanding of the collective agreement and the academic culture, this was a great shock. I wanted to complete my response because I was tired yesterday afternoon at this question and may not have given as complete an answer as I would have liked.

H: Just to be clear, are you resiling from what you told us yesterday that you agree and understood to evaluate your students in an objective manner?

R: No, not at all – the answer I've just given does not touch on what you've just said at all – I've said that the marks in a professor's course are assigned independently, and

on the other hand, that evaluation must be objectively made. Objective for me means all the students are treated in the same way, and this treatment is explained to the students right from the start of the course – so the rules of the game are explained, and all students are treated in the same way using the methods and the benchmarks explained by the professor and forming part of his teaching method. I am entirely of the opinion that I have always done objective evaluations in all my courses, in all the theses I have evaluated, etc. I have never suggested otherwise, and I do not think otherwise.

H: Well thank you for clarifying that, Dr. Rancourt, and do we also agree that you or any other professor didn't evaluate students in an objective manner, you could be subject to discipline? You understand that?

R: I believe that the collective agreement specifies exactly that and uses the word "objective" evaluation of the student. If the Employer has reason to believe, based on evidence, it could launch an investigation, and the fact that that could lead to discipline seems obvious to me. And I remind you that I offered on many occasions to meet Dean Lalonde informally to speak about his concerns. Even in my grievance, which is exhibit 40, I recall this fact...

H: Dr. Rancourt, just because we'd really like to move forward – if we focus on my questions, we might just get home in this case. But I'm telling you – if you meander around we might not get there.

R: OK, thank you.

H: Exhibit 12. I think it's only proper to start at the outset of 21.1.2 before we get to sub-paragraph c). It says "every member shall have the right and responsibility" and then certain matters are set out below. And I think given that we have it on the screen, it's worthy of noting paragraph b) related to the issues discussed in grievance G-14. I would just highlight for you the words "to organize course content"... "course descriptions consistent with Senate" – so do you agree with me that one of the obligations is to have regards to the description approved by Senate?

R: I can respond to all of your questions of this nature – each time you ask me if I agree that the paragraphs or statements of the collective agreement consist of responsibilities of professors, I will say "yes" – I've never found a paragraph or sentence in the collective agreement that I believed was not part of my work. So your specific question is about the course description approved by Senate, my answer is "also and yes".

H: And would you agree with me – or, let's put it a different way – is it your understanding that an obligation of a professor is to use a grading exercise that has regard to the course descriptions approved by the Senate. Put it another way – would you agree it's not open to the professor to just go off on a frolic and teach...

R: Can you – because you’re asking the question in two different ways.

A: Yes, that’s two questions.

R: I’m having a hard time understanding one question, when you ask a second question that makes things very difficult. Please ask one question at a time, that would help me a lot.

H: That’s fair – I’ll do that – I thought it was a clarification but I can see how it might create confusion in your mind. Must a professor when engaging in a grading exercise pay attention to the grading in the course description approved by Senate?

R: I disagree with an underlying assumption here – you talk about a “grading exercise” – you are assuming that this evaluation is independent of the teaching method – evaluation is always an integral part of the teaching method. There is nothing in the collective agreement that contradicts this thing, which is obvious and has been recognized by the entire community and even in Arbitrators’ decisions. Now, to answer your question – the professor is responsible to advance, to use the course description as a guide to cover that material – it doesn’t mean we can’t do more, and other things in addition – there’s no rule that it’s a constraint and we can’t do more, but we have to cover that material – then the professor has to use teaching methods that optimize learning in covering this material. For example, I refer – because you are citing the collective agreement – if we go to 21.1.1 paragraph (a) “every faculty member shall have the responsibility.... to maintain her competence and effectiveness as a teacher and to ensure her teaching reflects the current state of knowledge” – “current state of knowledge” means knowing what the latest developments in teaching are. That’s how I understand this paragraph. The professor is responsible for this method and its effectiveness, and that he is up to date with advancements – that’s why I have spent time studying the Physics Education Research domain and why I have attempted to implement some of those methods. That’s it.

H: Just to better understand your approach – are you saying that the professor would be free, in a 4<sup>th</sup> year physics class, to note that a student displayed great progress in his knowledge of chemistry to give him an A+ because he’d shown such knowledge of chemistry in his class?

A: Because he showed?

H: Great knowledge of chemistry in that class.

R: OK, that depends, because the discipline of chemistry is very wide and has a very large overlap with the domain of physics. For example, solid state physics has a very important overlap with what is called “Materials Chemistry” – there is even a battle between physicists and chemists about who controls the domain, in certain institutions. So, if students use journals, scientific sources in chemistry, and do research about the work of chemists, but cover

the course content in the solid state course, I see no problem. I don't see how there could be a problem there. It could even be an advantage, especially in a course like mine, where students share their research and results with the class. In that sense it becomes a significant advantage to have a broader perspective.

H: Do I understand correctly that a key to your answer is that the student "covered material in the physics course i.e. material within the course description approved by the Senate"?

R: I want to explain more – the goal is to cover the material that is foreseen in the curriculum for the course – but nothing stops the professor from adding material from other disciplines, that is relevant – in fact, it's an advantage to do this, because it allows to deepen the material – e.g. in a solid state physics course, like mine, a student, by studying a problem in the course, might want to look into something in a deeper, more fundamental way, which might be in another science discipline – in solid state, an example that comes to mind is that quantum physics is fundamental to solid state physics, and the discipline where this is most advanced – this is argued – but it's in quantum chemistry where there's the best understanding of solid state physics at this level. So there's a course called quantum chemistry and a course called solid state and they can overlap – it would be neanderthal to not permit this.

A: Just a second, you said...

R: The important point, to respond to the question, is that it's completely normal to look for the scientific fundamentals to understand the material in a course – this is typical in a course. Especially, if this material is not known by a class or by a student. So it was never the intention of course descriptions to closet subjects and material – especially in my department, which was very interdisciplinary – we are proud of our flexibility to go into other disciplines, including biology – the physics department in which I worked did a lot of work in biology and gave courses in physics in biology!

H: Dr. Rancourt, you're wandering again.

R: Yes, yes.

H: Let's move down to paragraph (c) – 21.1.2 (c).

R: Yes.

H: And the words that I refer you to are "to evaluate students' performance objectively, in a manner appropriate to the course consistent with relevant academic standards and marking scales approved by the Senate" – would you agree that the direction in paragraph (c) to evaluate students' performance objectively in the manner appropriate for course suggests there should be a connection between the evaluation and the course?

R: I think we have to keep reading because, in the same sentence it says “..it being understood that any rule approved by the Faculty Council and approved by Senate must be approved” – I understand the entirety of this to mean “when you make an evaluation of a student, it must be objective, and to the best of your professional capacity, it must be adapted to the course and follow what could be called the ‘academic norm’” – the academic norm is where? In the academic practice – and this includes the teaching methods that I used. So, I do agree that this paragraph says what it says, I think I understand it, and I believe I applied it correctly and responsibly.

H: Well, just on that point, let’s orient ourselves chronologically – the Dean’s letter was sent to you Nov. 2007 – could we go to your very helpful summary of your courses at exhibit 119? Would I understand correctly that PHY5130 was a course given by you in the Fall 2007?

R: Yes.

H: And would the course have commenced in September and concluded in December of 2007?

R: Um, Autumn usually lasts four months starting in September.

A: So the answer is yes?

R: Um, yes.

H: So when would you have assigned the marks in that course? Not exactly, but would it have been in early December?

M: Final marks?

H: Yes.

R: There is a deadline after the end of the exam period to give final marks. I don’t remember the deadline for submitting final marks.

H: But approximately, when?

R: Uh, (*sighs*) – let me see, I think – I don’t really remember, but I think we are given between two and four weeks after the end of the courses. I don’t remember.

H: What’s the range of possible times, can’t you tell us that?

M: Answer was between two and four weeks.

R: The last class was usually beginning or middle December – then the exam period, then the deadline. It was also possible to get an extension, etc.

H: We're not going to go into the details of it – did all the students in that course succeed in getting an A+?

R: In that course there were 5 students registered initially – one student left the course and told me it was too much work for her. The 4 others received an A+.

H: And just staying with your course list, we know that in Solid State Physics, all students received an A+ and you also taught in the Winter 2008 PHY4... Mécanique Quantique. Did all students receive an A+ in that course as well?

R: Yes, all students in the course Mécanique Quantique received an A+.

H: Just so I have it correctly, in chronology, you received this warning letter in 2007, then all students thereafter received a grade of A+. Just as a matter of fact.

R: Well the facts are such as they are – I have identified the letter, and I can tell you that this course list is correct to the best of my memory.

H: Now during the same time period, we've touched on this earlier – you were invited to Queen's University to give a talk.

R: Yes – I believe it was in October 2007.

H: So I'll ask you to return to exhibit 136, which we've touched on on previous occasions, but..

A: 136?

H: Yes. It's called "A Q&A with radio station reporter" and I'll take you to pg. 6. I'll be referring to paragraph 4 at the bottom of the page. The question is posed "You mentioned how you weren't grading – are you still not grading.. regulation..." and your answer "Yeah, I still don't grade – I refuse to grade". Why don't we just have you explain that comment?

R: Yes, this document exhibit 136 was never identified, and we have decided to allow it because you asked questions earlier in the document, and I think we constrained ourselves to that part. I have not yet given a complete response, which I would like to do now: you asked me, "did you have any reason to believe that you didn't say that" – and so I would like to speak about this document, which is not a document I produced, and for which the University has not identified the source – I have reviewed the documents produced so far, and I would like to explain why I believe this document is not correct – does not give correct information, and to do this I would like to refer to exhibit 88. In that exhibit, if we could put it on the screen, so this is an email from a student who was hired, to say it simply, to be a spy to gather information about me – she gave a false identity, etc., we know the case, it's Maureen Robinson



– she sent Dean Lalonde and Michelle Flaherty this – we see in the 3<sup>rd</sup> paragraph “I have a question, has DGR been informed that we obtained a copy of his Queen’s lecture? If so, I might approach correspondents with the UBC parties differently.” – and this signals that it was the spy in question, Maureen Robinson, who may have created the document before us – which is a report about my talk at Queen’s, which is an incomplete report. I question this report. To show why I have doubts, serious doubts, I would like to turn to the next exhibit, 89. This is an email from Maureen Robinson, the student, to Dean Lalonde, dated Aug. 30, 2007. Essentially, to summarize, there was an exchange related to hiring Robinson to do the work that the exhibits show she did – in this email the possibility of hiring Robinson is explored, and Robinson says – I think this is the 4<sup>th</sup> paragraph starting with “To” then “your colleague wrote a letter”. So, here it says – “your colleague wrote a letter in the Fulcrum’s frosh issue calling students to “join the activists” – she worked for the Fulcrum and the next paragraph says “I have a grudge in his condescension towards us non-activist students participating as mindless cogs” – so here we see that this potential employee of Dean Lalonde informs him, in advance, that she has what she calls a “personal grudge” against me – and it’s clear in this letter that she’s talking about me – it would not even have been produced if it was not about me – so we have an employee who has *a priori* a grudge against me, is hired by the Dean, and writes this report that I am criticizing now. So I am very concerned by that, and then this employee – we can go to exhibit 86 – it’s the same employee, this person took the false identity of Nathalie Page and used a gmail address for this person – and Nathalie Page a.k.a. Maureen Robinson sends this email to Michelle Flaherty, Dean Lalonde, and another person – I think that’s Robinson’s email address at uottawa as a student – it starts as “Hi, it’s Nathalie, haha” – so she’s mocking the fact that she took that false identity and says “You know, passing as a smiling girl.... police officers.. pedophiles” – and she signs it as Maureen. Then she adds a P.S., which says “if you want access to the Google group, log in with” – and a link has been removed by the university – she gave the link to these administrators and the password, in another email to the Dean, and these administrators would not have had access otherwise. Exhibits 94 and 95 show that she gave the password to the Dean. Then, at Exhibit 87, there is another example where Maureen Robinson writes to the Dean on March 6, 2008 where she informs the Dean that she’s using her false identity to obtain more information. She says “conveniently, Nathalie is writing her thesis soon, and this lecture could ‘save her life’” – so the Dean was completely aware of her method of using a false identity. So, given the nature and the activities of this person and how she worked with the Dean, and the fact that it was she who produced this report – just this in and of itself gives me a great concern about the precision of this report – then, if we look at the report itself, there are other reasons to doubt this report.

H: Are you finished?

R: No .

H: No, you have more?

R: The event at Queen's lasted an afternoon – at least 3 hours, if not more – the report, it's clear as a selection of several parts from that session. And from what I see, it doesn't include the long introduction, where the context was explained. All that is absent from this report. In addition, we see in the report that many times she says "there are other things, but I'm skipping over that", etc. So even the person who wrote the report acknowledged it was incomplete. When I read the text, there were several times where I know I gave more information, but it has been abridged to the point where the meaning has changed – from my memory. So this gives me doubt that this report is reliable.

H: Are you finished? So when you read those words that are attributed to you "Yeah I refuse to grade" – are you telling us you didn't say those words?

R: No, that's not what I said. The words here were most probably words that I pronounced, but there are words, if I read this paragraph, I have the impression that the statement and the response are incomplete. Even if, from memory, these are the words I used – I believe I used these expressions – but there was more detail regarding one statement in a paragraph.

H: Dr. Rancourt, did you by chance make a personal voice recording of your comments on that day in Kingston?

R: No, I don't think so.

H: Are you sure of that sir?

R: Yes, I don't have a reason to do that unless someone asks me to so that they can hear it another time.

H: Do you want to take a moment to think about that?

R: I would say it's possible if someone asked me to.

H: In your memory, did you take a voice recording?

R: I would not exclude the possibility – from my memory, no, but sometimes people lent me voice recorders to take copies of my speeches – so I wouldn't exclude the possibility, but no.

H: Just to be clear – what do you mean by someone "lending you a machine"?

R: Sometimes people lent me voice recorders when they wanted to hear my talk but couldn't be there. I don't remember that happening in this case, but sometimes that's what did occur.

H: And you do understand sir, that, had you made a voice recording it would have been your obligation to produce it, don't you?

R: Yes – in the sense that it's related to these documents, yes.

H: I'll just refer you to one of your documents. Just so we can locate the document, it's called "UofO Covert Surveillance". Could we begin by just having you confirm this was a document you prepared about your views there was a covert surveillance going on?

R: Yes, it's a document I prepared.

H: Every word of it, correct?

R: Yes, except for where I took text from elsewhere, etc.

H: Refer you to pg. 9, first paragraph – mentions "my own personal voice recording" – where is that recording, Dr. Rancourt?

R: It doesn't exist. If that file existed, it doesn't exist. Those are big files – I searched for everything. There's nothing there – I could look again, but I think the result would be the same – there is no file that would be that recording.

H: Dr. Rancourt, you read those words – you created a personal voice recording?

R: No, it's possible that I made a recording for someone else and then passed it on to someone else – what happened, probably – I don't have memory, but maybe someone asked me to do a recording with their own machine, I made the recording, I knew that when I made this document, I passed on to other things, I don't remember who would have asked for that – I don't remember that I wrote that in that document, and I certainly don't have a recording of this – let me read the paragraph.

H: Dr. Rancourt, you mentioned that you perhaps still have the recording, will you search again?

M: Dr. Rancourt did not say that he perhaps may have it.

H: Are you prepared to search for the recording?

R: Yes.

H: Now I refer you to the next paragraph.

R: But, doesn't the university have a recording that it should produce?

A: The question was "will you search again".

R: But I think there is a document that clearly shows that the university has obtained a copy of this recording – there is an exhibit where Dean Lalonde speaks to Pamela Harrod and says "listen, Pamela, I have this recording that Maureen made for me, do I have to disclose this?" – this was in an ATI request, so this was very serious, and I don't see how the university failed to produce that.

H: Dr. Rancourt, I'm sure I understand why you'd like to change the topic, but let's just stay with your voice recording – you understand that it would have been a serious offence for you to delete that recording?

R: Yes, after the undertaking that was taken, if there had been such an action, yes, but there was never such an action.

H: And do you agree with me that this event, this Queen's University event, is a pivotal event in your narrative about covert surveillance. In fact, we see that you put an asterisk to indicate its importance?

R: I can't say that the asterisk means what you say it means.

H: Well you wrote it, doesn't it mean that this was a pivotal event in the covert surveillance narrative?

R: Yes, secretly recording a professor's talk in this way for a university administration was very troubling in the academic context.

H: So it would be extremely surprising how this voice recording that would support your narrative – that you would just forget about it, wouldn't you?

R: It's clear I forgot about it – I wrote very quickly because I was very shocked to have discovered there was a person – I'm not sure I knew her name – oh yes, the name is in the document – I was very shocked by that and found out about it through an ATI demand – I wanted to signal there was a big problem here and so I wrote this document. But if you asked me what is in the next paragraphs or what is the content, I don't remember – there were indices produced following ATI requests – very few documents were produced – all the documents about Maureen Robinson were obtained thanks to the fact that the University produced them in this arbitration – before that it was indices, etc.

H: Do I understand you prepared this document about your voice recording in January 2010?

R: I can't confirm that – the date might have changed, there might have been updates.

H: But the date on the first page was Jan. 2010 – so it was at least then or later, right?

R: I can't say – it was a non-official document, written to get a point across. I don't remember, I may have updated and changed the date, I don't remember.

H: We can agree that you prepared the document after you were dismissed by the UofO?

R: It was after I received the first ATI responses from the university. So did I start writing it before, I don't know.

H: Dr. Rancourt, I submit to you that you did make this personal voice recording, that you were well aware of how prejudicial its contents would be in this proceeding, and that you destroyed that recording – what do you say to that?

R: Absolutely not, I did not destroy any document in relation to this arbitration – absolutely not – I've given up many documents related to Claude Haridge, for example – if I cleaned up my email years ago, that's one thing, but I absolutely did not destroy records related to this proceeding.

H: We'll ask for the morning break, sir.

A: 15 minutes.

*(Break at 10:58)*

*(Resume at 11:15)*

H: Returning to the content of 136 – you say “Yeah, I still don't grade, I refuse to grade, so what I've done recently is simply give everyone the top grade”. Can you tell us what you are referring to when you say recently?

R: First, I would like to – because in your question there is a real risk of misunderstanding – in this context, everyone understood that “grade”, “to grade”, and “grading” meant the traditional method, while “not grading” meant to student-centred method. So given the context of the event as it was, everyone understood that was what I meant. Your question was

“what course was I referring to” – so from this moment on, I tried to use my student-centred method in all my courses – so it applied in all my courses.

H: Dr. Rancourt, your words are “what I’ve done recently” – any person reading those words would understand that you’re referencing what you’ve done in a course at the university?

R: No.

H: Oh that’s not what you think those words meant?

R: I’m not talking about a specific course, I’m talking about the general context of my approach – it’s in this sense that I expressed this – “recently” means in the last years of my career – I tried to implement these methods during that period, and my intention was to continue doing so in the future – it was my professional decision – that’s how I understood this broad question. It was not about a specific course.

H: What about the words “I’ve simply given anyone the top grade”. What’s that?

R: In the schema approved by the Senate, it’s A+.

H: What did you mean by automatically, without any possibility of getting a lower grade than that?

R: I think to understand this, you have to look at the next paragraph, where I explain it in more detail – it was an oral conversation, it was carried out with much enthusiasm, perhaps I was mistaken in my choice of words – but look further down, and something is missing also – but in this context, I am trying to provoke – I’m trying to provoke a deeper thinking, and I throw out a challenge to professors to do something other than the traditional method – in this talk I was provocative, it’s a choice I made. When I say I was provocative, I want to explain this, because I use this word often – I don’t mean I make people angry – I mean that I shake up the point of view of a person enough to make them reconsider their point of view – this concept of “provocation” is intimately linked to the pedagogical method itself, because the first great discover that the PER researchers discovered in the past 10 years, was that students could not learn physics – impossible – if we did not provoke them by attacking their existing assumptions – so one needs to attack and take apart their pre-existing assumptions – one has to say “No! That’s false, what you think!” – the student has to feel targetted and reconsider, in the case of PER, it was Newtonian physics – and I was using this same technique in this event. OK, it was a language I chose in order to be provocative. But if we continue, “that’s the first rule of the classroom”...

H: Top of page 7.

R: "That's the first rule of the classroom – we do not talk about grades beyond the first day" – I can say that's false right away – because we talk about marks and evaluation much further on than the first day.

H: What do you then say?

R: Wait, let's look at the whole paragraph. So, what I mean is that we're not going to talk about the traditional method – we'll leave that aside and go forward. But obviously, each time I did that students had many questions, many concerns, and so we ended up spending a lot of time talking about the traditional method. Then, the next paragraph – "I'll explain what it's going to be about, and you're all going to get an A+ at the end of it" then "I explain why and how it is". And that is the most important sentence "I explain how and why it is" – because it's there that I said to the audience, I explain to students what I mean by that, and how it can happen that they can get an A+ -- I certainly gave more context, that's where I explain, in great detail to students, "why and how" to students. So this phrase is attached to this large discussion. So I'm sure I would have given more details at this point or I would have given those details in the larger context which is not written in this report. So when I say "I'll explain you're all going to get an A+ at the end of it" – this means there were no constraints and everyone who did the work and were motivated by this liberty and this approach, by the discussions in class, everyone could have an A+. So I say it in a provocative way because I want to shake up the traditionalists and lead to a discussion.

H: Just move a little further down in your response to that question. You say "and I will defend that till the end, they're going to have to take me to Court to take that away" and the journalists say "are they trying to" and you say "sure, yeah, there are several disciplinary tracks to try to get me to stop doing this" – would it be correct to say that you were quite aware in October 2007 that the university would discipline you for these practices that you had just outlined? Would and had?

R: Well I was aware that the university wanted to know nothing – it was a brick wall in front of me – I was aware of the attitudes in front of me – a negative attitude – but these statements here, I was carried away in the event, and this could be called "bravado" as if I was saying "oh I will stand by my principles and fight to the end" – they didn't want to explain things to me, they just wanted to discipline me, and so this was my reaction to that situation. So I express I think a mix of frustration and desire to communicate the idea to people listening that they too could be brave in developing their pedagogical methods – to lead to a discussion, an academic activism – to go past the artificial limits imposed by administrators – it represented all that, it was "on the fly" that I made these oral statements, and it came out like that.

H: Sir,

R: But, I would like to add something – at this time, in my mind, one of the reasons I was so “brave” if we could call it that, was that in my mind, deeply, I did not believe – I was very naive and I did not believe in October 2007 that the university could fire me, given the circumstances I lived, I said to myself “it’s not possible, I do my job in a totally legitimate way, I have tenure”. It was absolutely impossible in my heart. Even Dec. 10, 2008 when I went to the meeting with VP Major and Dean Lalonde, where they told me they had recommended that I be fired – going into that meeting they didn’t tell me what it would be about – it was absolutely inconceivable to me, and I was in a state of shock following that statement – to me it was totally inconsistent with the entire world of academia.

H: Just take you over to pg. 8 – I’ll read it out “I would much rather concentrate on how I’m going to kick some ass... create more democracy.. students take power... e.g. I remove my power by saying ‘I will not grade you. You will pass the course. You can walk out of here and you’ll still get an A+’” – are you saying you didn’t say those words?

R: It’s completely possible that I might have said those words, it’s in my character, and it’s completely an exaggeration and a provocation. The real, deep meaning here is that students will know that it’s their individual progress, individual capability, that will be evaluated. So there are many elements in this paragraph – it says “you have total freedom to interact with me, tell me to be quiet, ask me to leave the room while you discuss things” – all that is true – I don’t want to be someone who imposes an authority – I want them to be free to discuss things and organize class – there were a few times when students asked me to leave the class in order to discuss things, and I was pleased to oblige them. So I offered this to my students. I told them they would have more control and that I would not be authoritarian over their actions and impose external criteria – I told them I would not take back that power – that’s true, what I meant by that. I said “so I do that, but at the same time, don’t shut me up” – that means I’ll be very active and very direct with them – I won’t be someone who’s silent – I’ll give my opinion about their progress and work, everything that I think might be useful. What was the other element that you read? “I would much rather concentrate on how... kick some ass”...

H: My only question was if you used those words, you’re on your own now for about 10 minutes.

R: OK, well I thought that you wanted me to explain the meaning of the words.

H: If you want to, I won’t interrupt you.

R: I’ve tried to explain the meaning of the words as presented at that event.

H: Sir you’ve said these words were used as a provocateur and you explained the meaning – when you say “you can walk out of here and still get an A+” – if a



professor said that to students at the beginning of a class – that’s a breach of a professors duty. Do you understand that?

R: If a professor said only that, and it wasn’t attached to an explanation and a context of a responsible pedagogy, I’m entirely in agreement with you. So yes, I agree.

H: Indeed sir, would you agree that that kind of conduct would be serious, because it represents little more than an academic fraud. Would you agree?

R: No, that wasn’t in my mind at the time I gave that presentation – nothing of that which you are putting in front of me, because it wasn’t about that – it’s not relevant, it’s not attached to the event here and the words here – it’s a technical statement about something that might be true in the strict sense, but it’s not attached to what’s here – in my mind, it wasn’t an element that was present. The concept of academic fraud, while I was doing my job responsibly, did not enter into my mind. It did not cross my mind. In fact the word “academic fraud”, I saw it for the first time in a letter from the Employer – it may have been the dismissal letter – which said “what you have done is perhaps equivalent to a kind of academic fraud” – that was the first time I’d seen, in my career, the words “academic fraud” regarding how a professor assigned marks. I found that very exaggerated – well, exaggerated is not the right word – irrelevant – false.

H: I’d just ask you to refer to exhibit 2. This is an email from Philip Vinten who testified at this proceeding, and this email was sent to the Chairman of the Department of Physics...

R: I seem to recall parts of this email being blacked out, but what I see on the screen doesn’t have that.

H: Let’s work with the screen version, I believe that’s what was put into evidence. Draw your attention to the paragraph beginning “In the first class Dr. Rancourt told us directly that everyone in the class would be receiving an A+. He went on to describe his teaching method.... removing the grades less stress on us to learn.. does not believe in grades.. no one can be harmed in system of giving everyone an A+...”. I suggest to you that it’s striking that what Mr. Vinten is saying in that email is remarkably similar to what you said to that audience at Queen’s and that radio reporter. Do you find that remarkable?

R: No, I don’t find that remarkable.

H: But you had said that you told the Queen’s university audience – that was just an exaggeration, I was just being a provocateur ....

R: What I told you about the Queen’s presentation was that I explained the context and everyone understood – I had no reason to believe people did not understand. I made

the same efforts to communicate these points to the students in my class. I know that many students do not understand or misunderstand, and can have reticence from not understanding, because, especially the students who have the habit of the traditional method from one class to the next will have hesitations – there was a large discussion about this, and it went into a few classes – as I explained, in order to teach students you have to destabilize students conceptions – so I did this, I used this pedagogical method – I used strong language that challenged their preconceptions – I used clear language – Mr. Vinten, who wrote this email, dropped the course – he didn't stay in the course, he did not benefit from the method or the discussions that followed, and he wrote this, that's what he wrote, I don't know why he wrote it that way, but he said anyway "he went on to describe that his theory, or rather his teaching method he uses" – so he talks about A+'s – I explained the "how and why" – it's in this order that I did things, I said "it's possible that every one of you, using this student-centred method, could achieve an A+", then I explained the method. In this discussion, I also discussed the traditional method. This shocked them, because they had already invested 4 or 5 years in which they had used the traditional methods. So to think that during this time they had not used the best method, that's shocking, and people have a tendency to reject that. When one proposes this method to students, there's always a rejection. There was a case at MIT where students signed a petition against a change in pedagogy in a laboratory, I believe – and there was an article written about this where the writer explained that even though the change would be of benefit to the students, there was a negative reaction, even very negative. And Mr. Vinten, perhaps was someone who took that very negatively. He was very angry. It must be said that Mr. Vinten was someone who received mostly A+'s during his student career, he received high marks, and he said something about how "you don't have to work to get an A+" – so he saw this as disadvantageous for him because other students could have the highest mark in relation to their own work – and I saw this as deeply bothering this student. That's how I understand what he says here. There were students who reacted very negatively in the course and who later said "OK, now I understand" – and I saw them close up again and not want to do the work – there was one student who said "if you don't force me, I can't learn" – he meant "if you don't oblige me to do the work, I can't learn the material" – and for me this was absurd, but it was his position from the start, but there were several who had this impression. But everyone, except for Mr. Vinten, who left the course, participated and benefitted from the method. But I foresaw this possibility, that students might not be happy with the change – it's very difficult for a professor in a discipline where bad habits are deeply rooted in students as a result of the program – I did my best to go beyond those barriers. It was a difficult conversation. It was complicated. Mr. Vinten chose to quit the course and write that letter. It was his position. The others stayed and continued to work.

H: Now, do you recall doing an interview on a radio program, 98.5 FM, with a host Benoit (?)Ducrazak(?) in 2009?

D: This is UO00001853.

R: Is this a program in Montreal?

H: Well if you can assist us there, it is a transcript made from an audio of this radio program, but you're the one that was involved, if you see some inaccuracy in the transcript, you're free to point that out.

R: I'm also sure this interview would have been made in Montreal, in French.

H: One moment, I wanted to point that out – this is a translation.

R: I would prefer to have an original copy?

H: That's not available, a recording is not available, this is what's available and you're the witness, so use your memory.

R: That's asking a lot from my memory.

A: So this will be 152.

H: I'm told we do have the French version if you prefer. What I suggest is over the lunch hour we'll make that available to the witness.

A: And we'll file that as 153.

R: So...

D: It's 1861.

H: Let's park that for the moment. Did you make an audio recording of your remarks at Quebec City on May 7, 2008?

R: Uh, that was the presentation I made at...

H: I believe the title was "La Place de l'Anarchisme" in Science Teaching.

R: I don't remember from memory.

H: When you're just checking on whether or not you have the Queen's university recording, I'll ask you to search for this one.

R: I can but it would be unusual – when I searched I did not find that.

H: Well I don't mean to be disrespectful, but your memory has to be looked at in regards to your forgetting if you made a copy of your Queen's talk.

R: I'll search. Ah! I remember – one of the organizers, who was a prof at the UofO, made a video of my talk. I never had a copy of this video, but I know there was a video created. The organizer of the event hired people to do a recording of the event, but I don't know what was done with that, if it still exists, how it was used – I don't know.

H: I understand that, but my question is “could you please look to see if you have a personal audio recording of the talk you made”?

R: Yes, I can do that.

H: Now I refer you to Exhibit 48. Take a moment to read it.

R: So it's not a letter of discipline.

H: No it is not. Is this the first time the Dean is putting you on notice with respect to his concern about the students he references in this letter?

R: No, I don't see anything in this letter about what I might have said to the students – did I miss something?

H: Let's look at paragraph... you say “provide an A+ to all students regardless of whether they come to class”.

R: So it's not a complaint that I said something to students, it's a complaint that he has been advised that I promised something. I just wanted to clarify this, because your question suggested that I said something specific. So, yes, this is the first time the Dean complained about the course PHY4385, and about the marks. March 25, 2008. This is the first time, but I might be mistaken.

H: Further down it says “grades... admissions, scholarships..” do you agree?

R: The large and non-specific statement, yes I agree with that. But I would qualify it, because when he says “relied on” someone could believe it was the only thing that would be important, whereas marks are one of the many things that a university uses to make that consideration. Sometimes it's not a part of the consideration, sometimes it's one of many considerations.

H: Accepting that, you would agree that grades are relied upon – as you say, in conjunction with other things, perhaps – not only by the UofO but other universities. Nothing controversial about that is there?

R: No, no – but it's a general statement – some universities base their decisions more on a e.g. a project done by the student, etc. – all the possibilities exist in North America, but in general, yes it's true. There's a marks component, often.

H: And just looking at the reference to awards for scholarships and bursaries, would you agree that grades play an important role in whether or not one student or not receives a scholarship or bursary rather than another student?

R: I think the best way to answer is to say “often, that's the case”. But, it must be said that usually it's not the mark in one course, but the average that is looked at for such things. And often, it's not just the average, but the ensemble of marks will be looked at, and they will see if there are exceptions high or low and look at things that way – there are several mechanisms that the selection committee can look at, but it often involves marks. But I know that for the most prestigious scholarships at Master's or PhD level – committee members will put more emphasis on scientific articles and recommendations from professors and less emphasis on marks – that was the case in my research group – when a student applied to my research group, I put much more emphasis on articles and recommendations than on marks – and I know that many other research supervisors do the same, from discussing with others. One of the reasons this is so is because all research supervisors have the experience of having a student with very high marks but who is intellectually quite weak, and can't adapt to research. I've had several examples of this type, and of the opposite case, where a student's marks are middling, but who will excel in the research context at that higher stage of university, with the freedom that comes with it. So people in physics research take marks with a large grain of salt.

H: Would you agree that eligibility and success in achieving scholarships or bursaries are often critical to a student's academic career.

R: No, because if you say “often” that means more than the average – I don't know how many students get government scholarships – most of them are paid by their research supervisors – I don't have statistics, but there are departments where many students don't have scholarships, perhaps more than half of the department. When scholarships are competitive it can be rare.

H: Are you truly taking issue that there are some students from families who are perhaps from lesser economic capacity that rely upon getting bursaries and scholarships to get through universities?

R: No, I know that's the case in some disciplines, but not in physics. In physics in Canada, all graduate students in physics are necessarily paid through their research supervisor or through a government scholarship, or both. For example, in the Dept. of Physics at UofO, there was this policy, it was the norm, to have a “minimum salary” and if the student did not have a scholarship, he would have this minimum salary. If he got a scholarship, that would be

additional. But the minimum salary was enough to survive on, and pay rent, etc. So physics graduate students in Canada do not accumulate a debt – unless they choose to buy expensive cars, etc. – but in terms of tuition fees and living expenses, it's covered.

H: Dr. Rancourt, are you suggesting that grades are not relevant to a student's eligibility and continuing eligibility to bursaries and scholarships. I know you'd like to go off into the specific world of physics, but grades in the current university community?

R: I would say that in physics – when we get past the undergraduate level, it becomes secondary. Now this transition happens as we progress in the program. So scientific articles become more and more important and marks less and less. So after graduating with a PhD, when one applies for a post-doctoral position, it's rare that one's undergraduate marks would be looked at. And when a person applies for a university teaching position, undergraduate marks are never asked for. They never asked me for my marks when I applied for my posts. Never. I would have been happy to give them, but they were never asked for.

H: So are you suggesting that in terms of a university awarding a scholarship, and there being a limited number of scholarships available, that in your experience as a university professor, the candidates don't play any role?

R: No, not at all – I said that often marks are a factor.

H: Sometimes they are, correct?

R: Yes, often they are.

H: So, in those instances, would you agree that it would be very unfair if one candidate was graded or evaluated in an objective manner by his professor, and another candidate was evaluated in a non-objective manner? And I'm not talking about your practice, I'm talking generally, here.

R: In all circumstances where an evaluation is made in a non-objective manner, it is unjust towards the student. Period.

H: Time for the lunch break, sir?

A: We'll break for lunch. Quarter to two.

*(Break at 12:29)*

*(Resume at 1:49)*

H: All set.

A: What you gave me was a copy of 153.

H: You've had a chance to review?

R: I think the word "shocking" is not too strong regarding the level of translation to English here – if I were to give a mark to the UofO about the translation here, it would be very low (*laughs*). It's a very very poor translation.

H: Just to intervene, in fairness to the UofO, it was done by a staff member in my office, the UofO doesn't deserve those comments.

A: Whatever, we'll go with the French version.

R: So we'll remove the English version?

A: We won't remove the English version, but we'll go by the French version.

H: Given my unilingualism, I'll have to refer you to the English version, Dr. Rancourt. So, first page, 8 lines down, second reference to BD that says "thank you for coming in – decided to give A+ to all your students – you said "yes, not the only class I've done that". Please comment.

R: I'll concentrate on the francophone version. So, I remind you it was a live oral interview, and the interview had a certain background knowledge, they had done their research, and often the media had the habit of briefly summarizing the conflict as they saw it, and I was there confirming things, and I said "yes, I've done it in other classes" – I say "I used techniques which were very different from what I said in 2005" – so I'm in the process of saying "yes my techniques were different and that's why I had different results".

H: I'm a bit perplexed and I admit my French isn't very strong, but it seems to be a very accurate translation of your response – you say "yes that's what I did" didn't you?

R: I don't want to look at the English translation and go back and forth.

H: You agree with that proposition that you decided to go into your class and give A+ to all your students. Why would you agree to that?

R: This wasn't a legal exercise, the goal was to situate one's-self in the classroom and rapidly give answers – I'm happier having given the response that I gave and to later explain it in details – this is my choice, it's not the first time I've done this – I don't want to get hung up on what he exactly meant – but I had the chance to explain thing – right away, I explained how the method was different – and I see that I had other occasions in the interview to explain things. The public does not take this information – if the information is important to

someone, they will do the research on it – the goal of a show like this is to stimulate a discussion for the benefits that brings – it’s simply a discourse on the radio to invite people to do more research, think about things more deeply – but nobody takes each word as you do – it’s in this context that I had that discussion.

H:                                 Sir, you go on this radio program, you identify yourself as a physics professor at the UofO, surely you intended to tell the truth?

R:                                 I wasn’t the one who identified me, they identified me and what they said was true – I think that what I said was true – the questions were ambiguous and the answers were ambiguous, and everybody knows that – they know they’re not reading a legal document – I could say anything, and the audience could understand anything as well – it’s radio, it’s information distributed freely – they might listen to the end or not, but if they are stimulated by something interesting, all the better. It could be said that I decided to give A+’s, in the sense that I did not feel constrained by a need to give low marks. That could be exactly what they meant and could be exactly how I responded.

H:                                 Well if we refer to the question that seems to be at the bottom of the English and French documents – you say “we’re going to eliminate the entire concept of marks”. I wonder if the statement attributed to you is accurate?

R:                                 I’m comparing with the English version, and you want me to explain this last sentence?

H:                                 That’s right, the very end of that sentence, sir. I’m actually trying to move the process forward, but perhaps...

R:                                 You want me to comment on the last part of this sentence, right?

H:                                 Well, why not frame a question – that statement suggests that you as a professor had a practice whereby you eliminated the concept of marks – was that a correct statement of your practice?

R:                                 There’s not one concept, there are many – I did not eliminate marks in the broad sense – I said “we’re here to learn, and it’s not in our interest to rank students for employers, I try to use a method that is intrinsic” and then I said “OK, so we’re going to eliminate that – and that is all the bad aspects – so we’re going to do that in a democratic manner – so you’ll have a vote, in other words – in order to remove all oppression, and everything that comes with marks” – so this means traditional marks, because I say in the paragraph before that I’m using a pedagogical method which is very very different – so I say that the oppression that comes with marks is what exists in the traditional method – so I say “we’re going to remove oppression of marks as they are used in methods which are different from the method I’m



referring to, which is very different”. So this is the meaning. It’s a rapid conversation, and that’s how it came out.

H: You mentioned this concept of “ranking” of students. As part of your pedagogy do you try to move away from ranking of students in terms of their mark?

R: Yes, but I want to understand the meaning of “ranking”. Ranking means that one imposes one’s-self as evaluator to place students in a line from whoever has the lowest mark to the highest mark. And it’s insisted that there’s a spread between highest and lowest, and the goal is to say “this student is the best, this student is in the top 10%, etc.”. I’m against an evaluation method that contains the constraint that you have to have a ranking like that. We shouldn’t have that constraint, and in the student-centred method, this constraint completely disappears, because the person who evaluates the student does not have to preoccupy himself with the placement of the student in relation to the other students. So I evaluate the progress and work of each student individually.

H: Does that complete your answer. Would I understand correctly that to achieve this goal of eliminating ranking, there would be no need to announce on the first day of class, anything about students getting A+?

R: I didn’t understand the question, can you repeat?

H: You say it’s important to get away from this concept of ranking – in order to do that, is there a need to announce anything about A+’s? Do you link the two together?

R: There’s not a necessity about anything – the goal of the first day of class is to explain to students how the course will function. So I look for the best way to have myself understood. I look for – I know there will be a conflict with students when I introduce this new method, because all the studies foresee that. Fortunately in this case, in the case of the solid state course – many of the students heard that in the Quantum Mechanics course I used different methods and there was already a discussion in the department about that – so they were already a bit aware, and I echoed that on the first day of course. So we initiated the conversation that way – they already had reticence and concerns. I dove into it and I made an effort to communicate the advantages of a new method to them – in order to do this, I explained the disadvantages of the old method – and one of these is that professors feel obligated to rank students. It’s something that professors do in the culture, in the application of that traditional method, to do that. So the students thought that if they did not know how they were compared to their peers, they would not know how they were doing. This a very stressful situation for the student. I’m obligated to undo that and eliminate that harmful stress, knowing all the while that the students will resist the new method.

H: But Dr. Rancourt, with this novel pedagogy that you practice, wouldn't you eliminate the stress by saying "Everyone's getting a B"? Why do you each time talk about A+?

R: Uh, the B would mean, in their method, that they have made progress and an effort that had a value of B. And what I try to say to them is that they can get the highest mark – that there is no external rule that blocks them from that – they can honestly set to work and make a full engagement to the course and it's completely possible, even if you are a student who has a lower average than A, it's possible. Because the method will look at your individual progress, and your individual participation – so I attempted to reassure them that that was possible. But you called the method I used "novel" – that's not a word I would use myself – it's a well-developed method, used by researchers, above all in North America by physics teachers – but it's not the dominant method used among my colleagues. It's not "novel" – it's a method that is used.

H: Dr. Rancourt, would it be too cynical to suggest that you're assigning A+'s and telling students at the outset of each course that they're going to get an A+ is designed to make you a more popular professor?

R: Yes.

H: Would it be too cynical to say that it's designed to get you media coverage?

R: That's false. I don't know about cynical, what you mean by that, but it's certainly false.

H: Do you deny that that's part of your motivation for your pedagogy, that it's just to amplify your reputation?

R: Yes, I deny that. You have used the expression "just to", so it's very clear.

H: Would you turn to exhibit 48, which we dealt with before the lunch break? 2<sup>nd</sup> last paragraph "You were expected to evaluate students ... objectively... grading policy.. you must not grant any student in these courses A+ based only on attendance" – do you recall reading that direction from your Dean?

R: Yes.

H: What was your reaction on reading that direction?

R: I was – we already said this letter was probably the first time that the Dean complained about marks in this course. In my memory that is the case, it was the first time, and I was shocked by this accusation, completely false. That was my reaction.

H: Did you read the next sentence? “If you do so... serious disobedience... discipline including up to dismissal”?

R: Yes, I’m sure I read each sentence at the time.

H: Good. And did you understand that the Dean was seriously concerned about your approach to the marks in these two classes?

R: I can’t know what the Dean had in mind, but I understood that this letter was part of an unjustified campaign against me.

H: Return to exhibit 49, which is an email containing your response to the Dean’s letter. I’ll give you a moment to read through it. You say “At this stage I ask for a retraction of your bold... all students attend class.”

R: Yes.

H: Now, do I understand correctly that your position was that you hadn’t promised the A+ on the sole condition that students attend class. Is that your position?

R: No, I did not promise or guarantee A+’s. Not only did I not promise A+’s but also not given that they only attend class. So it’s doubly false, if you like. It wasn’t a question, it was an accusation, that the Dean said this to me. In my view it was doubly false.

H: Is there any reason you didn’t take advantage of this opportunity to say to the Dean “I’ve adopted a new pedagogy, here’s the nature of it” and give him an explanation. Why didn’t you do that?

R: Your question assumes that I didn’t do that, which is false, I think. Look, the first goal of my letter is to push back the Dean. It’s a rejection of his accusation, which is without foundation. That was the first goal – to complain against his letter. I even insisted in putting the VP Academic in Cc because I wanted the VP to examine the behaviour of the Dean as I expressed it in the letter, because I found that unjust. So my first goal in this letter was to put things straight and say “look: it’s false what you’re saying”. That was my first goal in the letter. I had a 2<sup>nd</sup> goal was expressed in the third paragraph from the bottom where it says “I would be happy to answer any concerns you have regarding my grading practices in 5435 if you would express them as concerns rather than baseless allegations...”. So my goal was to invite a discussion, as I had done on many occasions before this in different conflicts related to my work. My 2<sup>nd</sup> goal here was to say “Hey, we have to have this discussion”. But as I said, I was shocked, and surely with a cool head I would have written this letter differently. The tone expresses frustration but I think it’s normal in this context to express frustration, because I found the context to be extraordinary. At the time I did not know the precise terms of the words “libel and defamation” and I used these words. But strictly speaking, because of privilege, it was not a

question of libel and defamation. That was ignorance on my part regarding the legal aspects of these terms.

H: You had just received a letter from the Dean referring to discipline up to and including dismissal – did you realize you were in a pretty serious situation here that might result in an investigation?

R: I already explained to you that in my mind, there was not really a possibility of dismissal. So, for me that was a back and forth, part of the relationship between my Dean and myself. I could not imagine – I had the hope that simply complaining could renormalize the relationship regarding that aspect. I hoped my letter would cause the Dean to re-examine his approach, to lower the temperature and say “it’s true, let’s talk about it”. That was my hope in this letter. I mean, I already had honest and direct exchanges with Andre Lalonde because we knew each other well and we had often had disagreements and agreements, because we were collaborators, and my idea was to bring him to a position where we could discuss this. In my experience with him this was a possibility. This was the goal of my letter.

H: Come on, Dr. Rancourt, you were escalating the situation – accusing him of defamation, fabricating, reinforcing damaging falsehoods – you were escalating under any interpretation of this letter, weren’t you?

R: Absolutely not – I was shocked by this letter and I reacted in the best way I could in the moment, which was to say with force “Listen, you’ve made an error, you’re doing things that aren’t right, it’s really not right, you have to stop”. My goal was to stop this thing, rather than to make it worse. I’d never seen anything like this in my career – a Dean hears something and accuses a professor of a specific thing, simply writing a letter, March 25, 2008, saying “your inappropriate and unacceptable approach to grading these course” – he affirms this, and then said “I urge you to... provided only they attend class” – these were only accusations. He had already made his conclusion but he did not communicate with me about it. For me this letter was abominable, it was incredible, I had never heard of such a thing – all the Deans I’d heard of in all their ways of acting would always have gone to speak to the professor or asked the Chairman to do it. Not just pick up allegations and accuse him like that. So that was it, I was trying to correct this situation.

H: So further to your efforts to correct the situation – you took this correspondence between Dean Lalonde and yourself, in particular Dean Lalonde’s letter of March 25, 2008, and you took it to your class on April 9, and read it out to the class. Do I have that right?

R: I don’t have the memory of having read that letter to the class. I know that I spoke to the class about the conflict and about what happened. But I don’t remember having read that letter to the class.

H: When you say, “I don’t have a recollection” are you saying you don’t remember or “I didn’t do that”?

R: I would say it’s possible, in describing the situation to students, I could have read an excerpt, a sentence or something, a few points, that’s possible. It wouldn’t have been necessary, I don’t remember how I did it. I don’t remember that day in particular. But I know I spoke to the class. I think it’s OK that I spoke to the class – it directly concerned those adult students about what was going on, and I believe it was completely appropriate to give them an update about these matters, which could have directly affected them. Especially in the university context, where students have a voice in institutional governance. You mentioned a date, I’m not sure what date it was, and if I cited a letter, I couldn’t confirm it was the March 25 letter.

H: Refer you to exhibit 10. 2<sup>nd</sup> paragraph. Remind you that Daniel Pohl.

R: The student is not mentioned.

H: Just a second, Dr. Rancourt and Mr. Arbitrator, there are media people present, I’d ask them not to mention students’ names. I don’t know him. Are you with the media?

Joseph Hickey: Are you asking me in particular?

H: Yes.

Joseph Hickey: I do independent media reports.

H: I’d ask you not to mention student names.

Joseph Hickey: Can I mention a few things?

H: Let’s move on

*(Arbitrator hand signal to Joseph Hickey indicating he sit down)*

R: OK, I’ve read the paragraph in question.

H: I’ll refer you to the 2<sup>nd</sup> paragraph, midway through the paragraph. This student is saying to Dean Lalonde “he said you sent him a letter, then proceeded to read this letter to us” – do you take issue with the accuracy of this?

R: Yes, absolutely, yes.

H: I think you’ve acknowledged you’ve made reference to the Dean’s letter.

R: Yes, but this is completely hyperbolic and non-factual. I know there was a discussion and that the discussion continued after class – there was a lot of discussion. I think this was his reaction.

H: Dr. Rancourt, let's take it piece by piece. You say you don't know what letter it would have been?

R: No, I said that I remember speaking about it in class. I don't remember what date. I don't remember what letter I received. I have a lot of difficulty believing this is something I would have brought up on the last day of class – so I immediately have a problem with the student's report.

H: Maybe I'm not making myself clear – the student makes some comments you have characterized as hyperbole.

R: To the best of my memory, I did not do this on the last day of class. Normally I wouldn't have needed to read from the letter, I would have had a discussion with students about what was generally going on. But there were many discussions between students that could have been rigorous, etc. and many students shared ideas about everything that was debated.

H: Sir, I must be really making myself unclear today, because I thought we were dealing with a simple matter here. You're in a class with one of the students, he writes a letter to his Dean. He says, in one of the classes – April 9 – Prof. Rancourt read us a letter. We know there's a letter from the Dean dated March 25. Can't you simply confirm that if you made any reference to a letter, it must have been the Dean's letter of March 25.

R: No.

H: Do you deny you made reference on April 9 or any other class to the Dean's letter of March 25.

R: I've told you what I remember, and that's the limit of my memory. I've already explained that I remember speaking about the conflict in class. I don't know what date, and I don't know if I read the words of a letter, and if I did read the words of a letter, I don't know what letter. I also remember it was not the last day of class.

H: ...

R: I never would have used words in that way. My recollection of the words I used to describe the conflict do not match up at all with what the student has written here.

H: Then the student says, not only that the threats made in the letter not only are ridiculous but...

R: I never use an expression like that at any rate, and I would not have said that. It was not my goal to communicate such things with students. My goal was to inform them of a serious situation that could have impacted them. I find it's important to give them a forewarning, and that was my only purpose.

H: So you're telling us now that you wanted to make them aware of a "serious situation" – so what was this serious situation?

R: I wanted to let them know how the institution was handling their evaluation. I add that this student was one of the two who had the famous incidence of discipline, in which I had to intervene. The evidence is there, I had to intervene, my intervention worked, the students reintegrated and demonstrated a very high level of participation in the course. This report I would say is hyperbolic and factually incorrect.

H: I can appreciate why you might want to change the topic but back to my question – you just told us you wanted to make the students aware of a serious situation. Was that situation about the conflict between yourself and the university around your pedagogy?

R: There were many things going on that semester – I chose a time to tell students about this – I don't remember the exact time, but the reason I wanted to inform them was that it could have led to an impact on them.

H: So you made reference to the fact that you knew some students had complained. Weren't you well aware, Dr. Rancourt that in April 2008, the students you were talking to...

R: I...

H: Just hang on! Listen to my question – that the students you were talking to could be witnesses in a proceeding against you – isn't that why you mocked this letter?

R: Could you repeat your question just to make sure?

H: I reminded you you had just made questions to students who had complained – you were aware, in April 2008, that the students in that class could be witnesses in a proceeding against you, and that was why you read the Dean's letter to them and mocked the content of the Dean's letter?

R: It's not the first time I've heard your question, because I think I've read it in one of the Dean's letters – I think it's one of the formal accusations against me. The first time I read that accusation I saw it as completely false and a fabrication. I can tell you that it is completely false. I have already explained to you that I did not have the thought I would be dismissed, right up to the December 10, 2008 – and then I was shocked. I wanted to have my academic freedom, and my professional independence – I wanted to have the liberty to teach

according to my choice of pedagogy, and I wanted to protect students in the way I could. That was the context. But what you propose in your question is completely false.

H:                               Going back to your earlier comments, you said that this was a “serious situation that might affect them” – how did you think this might affect the students?

A:                               Question was “how were you aware that that might affect them?”.

H:                               My question is “how did you think this situation might affect the students?”.

R:                               I knew that the administration could change marks, had the power to change marks, and had the power to accept or not accept marks, and had the power to not issue marks during a period, which could be a long period. These would have been consequences which would have affected students directly – I believe that, as a professor, I had a responsibility to inform them of this possibility.

H:                               He says “...”

A:                               Just a second.. where are we?

R:                               I don’t know – I don’t know under what conditions the student wrote that letter. I don’t know if he heard that in class and immediately wrote it up, but this report is not correct. I’ve seen many things in this student’s complaints which are exaggerated...

A:                               Well, we’re talking about this letter here.

R:                               OK, yes, but I’ve seen many things that weren’t correct.

H:                               Let’s go to the next paragraph, he says “he then made comments about how the Senate made changes... specifically because of him”. Do you deny that you made words to that effect?

R:                               Yes, that’s not correct. I don’t know exactly what he’s talking about in that paragraph – I don’t know what he’s thinking in writing that paragraph, so I don’t have a reference point. I mean, I know that later there were changes in the rules regarding student evaluations, but it was much later according to my recollection.

H:                               And finally, the next paragraph: “He reports that a student then asks ‘it seems that you’re trying to turn us against the university’” – do you recall this?

A:                               Which paragraph?

H:                               “It seems like you’re trying to turn us against the university. I asked him whether a student made such a statement to him?



R: No – in my mind such a question was not asked in any course – the class in which I explained this conflict – there were heated exchanges after class – but it couldn't have been the last class, because we didn't cover the topic of super-conductivity in the last class. So there's an inconsistency with that. The last class would be about the nature of the final exam, the progress of the students in relation to this exam, and a kind of update about what had been mentioned in the class. It's just inconsistent with my memory that it would have been in the last class. So I don't agree with the facts that are stated here. I think it's a mish-mash of many frustrations that the student would have had during the semester.

H: Well, it's interesting you mention super-conductivity, because the student reports that the student who asked the other question asked "can we move on to super-conductivity rather than wasting time?" – do you deny having heard that?

R: All I can say, is that a comment like that would be completely out of place in the last class. So for me it's not consistent. I mean, obviously it's been a long time, I don't remember the dates, but normally it doesn't go like that in the last class.

H: We're almost there, but this student's recollection is so rich in detail that I have to quote it – he quotes you and says "if in the last half hour of class I can turn you against the university, then that would be worth it" – what do you say to that?

R: No, absolutely not – I would not have said something like that in a course. An exchange like that, if it happened, would not have been in a course, and it would have been an exchange where the student expressed frustration. It would not have happened in a course like that.

H: Afternoon break?

A: OK, 15 minutes.

*(Break at 3:26)*

*(Resume at 3:41)*

H: I'd ask you to turn to Exhibit 50, please.

R: Yes, I read the letter.

H: Now, we see that the Dean is responding to your correspondence of March 27, 2008, which I think we can agree is exhibit 49 – it appears to be an email in fact, of that date. The Dean writes "I'm deeply concerned to your response to a clear and unequivocal demand that you must not give students an A+ regardless of their academic importance" – did you notice that the Dean wasn't attaching his concern any longer to your not granting an A+ simply for attendance – his concern at this stage is not granting an A+ regardless of academic performance?

R: Yes, absolutely. It's a change that I noticed immediately on reading this letter. His first letter of March 25 was an accusation that I gave A+ "based only on attendance on class" – and this was repeated several times as a firm accusation in the March 25 letter, then all of a sudden the Dean changed his position – what had been a firm position became something else suddenly. So I certainly noted that.

H: At this point you understood that the Dean's concern was that you might grant an A+ to students in those courses regardless of their academic performance. Did you understand that was his concern as of April 2008?

R: Yes, I understood that the letter expressed that concern.

H: Of course, you say that's not what you were doing but let's just park that for a moment. He says "attribution is contrary to... department of physics..." – setting aside what your practice is, do you agree that granting a grade of A+ regardless of academic performance is contrary to Faculty standards, etc.?

R: Just to be precise, I think what the Dean meant – I think there's an ambiguity in the grammar that I should clarify before responding – because he says "A grade of A+ regardless of their academic performance" – I think he means "regarding the academic performance of the student" – because the marks are attributed individually, not to the students as a group.

H: Now, at this point in time, April 2008, you had not yet assigned your marks to the students 4385/5100?

R: I don't remember – surely there is an exhibit? Ah yes, it's the next.

H: I wasn't trying to trick you, it's there.

R: *(Laughs)* I can't remember that kind of thing. So exhibit 51 is dated May 13, 2008, so it's after. That is an email in which I send the final marks to Madeleine Thomas, who is the administrator responsible for receiving marks in the Physics Department. I see that the marks were received by Bela Joos on May 15, 2008.

H: Can you confirm that every student in the course did achieve an A+?

R: In this list of 24 students, there is one who is marked "DR" for dropped – for all the others, I can confirm that a mark of A+ was attributed. So some students here were in 5100 and some in 4385, but they are listed in alphabetical order – oh no, it's not in alphabetical order. The course code is next to the name. So there were 7 students in 5100, and one who dropped. So that means 6 plus the rest in the other course, if that can help.

H: Just to be crystal clear – every student in the course, in both courses rather, received an A+ from you?

R: I gave A+'s to all the students on this list.

H: I believe we established this morning that you were teaching 4770 in the same semester, and that all 21 students in that class received an A+ from you.

R: I don't remember the number of students, but yes, it was the same situation in that other course.

H: But it would be accurate to generalize and say that during the Winter term of 2008, all of the students who didn't drop out of your courses received an A+?

R: Yes, I attributed A+'s to all those students.

H: And you've affirmed to telling us the truth – you're telling us that all of those students had an academic performance that merited an A+ grade?

R: Yes. In the context of the student-centred method, obviously.

H: So let's turn to your student-focused method. I think that's a correct term?

M: Student-centred.

H: Student-centred? Thank you. Well, was it the case that even within this student-centred method that you concluded that all students exhibited to you that they had learned the curriculum of 4385 and 5100 at an A+ level?

R: Please repeat the question – I just want to be certain of the question?

A: Was it the case that in the student-centred method that you concluded that all students demonstrated to you that they had learned the curriculum of 4385 and 5100 at an A+ level?

R: I already explained that in no method, whether it's centred on the student or a more traditional method, in no case, independent of the mark, can we measure if the student has learned what is outlined in the curriculum. It's not just me who say this – it's unanimous – all the researchers in pedagogy are going to say the same thing, and it's been that way for decades. The question is not whether they've learned the curriculum at an A+ level – this question, from a pedagogical perspective, is ridiculous, because we can't know what's in another person's mind. But, we can examine a student's understanding of concepts, and all these scientific comparative studies show that even students with the highest marks, in general, had not understood or learned the material contained in the curriculum. I know that's certainly the case in my personal experience – when I was a student in undergraduate studies, I received mostly A+'s, and I know – because I continued my work, that I did not understand the material. And often I discovered things many years later, that I did not understand things -- it's not contested – it's one of the

known facts in the domain of physics pedagogy research. My position is that the students to whom I attributed A+'s had an academic performance which corresponds to an A+, individually, based on their progress and the level they obtained in terms of understanding and the effort they put in. Also based on their level of participation.

H: In light of your understanding of the various academic studies about the difficulty in assessing learning, does this somehow absolve the professor from evaluating what the students have learned in the course? Is that what you're saying?

R: Absolutely not – the evaluation based on this method is objective, and I've already explained what objective means in this context, but it's an objective evaluation. It is the same for all students, and it is based on the best measures available to the professor when he or she applies the method. It's not a question of my understanding of the research – it's the starting point, no understanding needed. It's stated directly. There is no conflict with evaluating objectively, however.

H: Now, is it your evidence, sir, that the rather remarkable coincidence that every one of your students performed at an A+ level that term is nothing but a coincidence, because you, with your pedagogy, enabled them to learn at an A+ level – each and every one of them?

R: The question is complicated because of the word "because" – I'll try to answer it – I don't agree that it's a coincidence – there's no coincidence here. It's the result of what happened with these students, those who did not drop the course. It's not a coincidence – my evaluation about how the satisfied those criteria – it just means that in the context that was created in the course, all the students succeeded in performing at that level. So it's not a coincidence. After that, the 2<sup>nd</sup> part – would my method have help them learn at an A+ level. That depends what you mean. If you mean "understand the material", I've already responded. If you mean "all the work they did, the progress they made, their participation" – if you mean that, then they learned, in that sense at an A+ level, in my professional judgement.

H: You make reference to all the things you measured – what did you measure?

R: The things I've just stated – so I tried individually, discussing with students, to see and perceive how things were going in the course. I asked them to explain their progress, their choice of techniques, their degree of participation in class, and I buzzed around like a bee in the class to talk to them – if I felt that a student started to lose interest or had a problem or something, I intervened right away to try to resolve the difficulty with the student. So, I assured myself that they would perform at that level throughout the semester. I wanted to see a consistent high level of work – on the contrary, the majority of other courses have a model where they evaluate at the end of the course – most courses have an evaluation at the end of the course in the form of a final exam – it's very common in the physics department that the final

exam could have a value of 100% -- it's common the professors will ignore the tests and mid-term etc. in favour of the final exam if that's in favour of the student -- and that's announced in class. That is a typical feature of the traditional method. So, the student can have an extensive period during the course where he does very little and then try to catch up at the end. But this "catching up" practice is very ineffective, and this is something that has been shown in the research. So I try to follow students constantly -- I stayed aware of the progress and work of the students as the course went on.

H: Sir, I want to give you an opportunity to comment on something I'll say to the Arbitrator at the end of this proceeding -- I think it's only fair for you to comment -- I submit to you sir, that what you just told us is utter nonsense -- there is no way that all of those students worked and learned at an A+ level, and you are giving us an utter fiction. Is that not true?

R: No. No is the short answer, but you have used the expression "work and learn", and I have already warned you about the meaning of "learn" -- with that explanation in mind, my answer is no.

H: I'll also say to the Arbitrator that a good reason for not believing this gentleman's what I will characterize as "nonsense" is because he's the same gentleman who told a radio reporter in October 2007 that what he told to students is "I will not grade you, you have passed the course, you can walk out of here, and you will still get an A+" -- I will say to the Arbitrator -- that's a good indication of why you can't trust this man. What do you say to that?

R: My response is the following: my class, and my responsibility as a professor, is a world which is completely different from my democratic participation in society through interviews, etc. I'm not saying their completely separated, but we have to look at radio interviews and statements separately from what's said in class to students. It's completely, I would say, aberrant -- each public communication has a goal, in part provocation, and in part to change things for the better -- the language to accomplish this is different from the language in class -- these are two things completely separated -- apples and oranges -- we can't compare them -- especially in my case, in which I engaged in an academic activism -- so there is public discourse and then there's my efforts in the classroom. Everybody knows, including those in my courses, that I am a very good professor, I am responsible, I inspire, I explain, who has a gift for explaining thing, and a gift for inspiring students to think and work. This professional side is what I do in the classroom, what I did for more than 20 years. My public interactions is the world of democratic influence to change ideas and improve approaches within universities, and this component of my work is also well-acknowledged. I was invited to many academic symposiums to speak about this activism, about these pedagogical ideas in provocative terms -- this was often why I was invited -- this was the goal, and there are many examples of this, which were in my CV and elsewhere -- I've been invited in many departments to speak regularly and repeatedly in their classes in my provocative style to challenge students and professors and to present new

ideas to them. That is my work of that nature. It is important work which must be done with liberty – it can't be constrained by an administration that engages in surveillance or some kind of control. It's an essential property of the University that surveillance is an antithesis of academia, for exactly the reasons illustrated in this arbitration. This work and this approach is completely distinct from when I set work in my physics lab, or when I go to an environmental science lab, or when I go into a high-level class – all of these situations are completely different. I have a professional responsibility which I take very seriously in all of those fora, and I include my political discourse as being responsible, because I think that it's responsible to put one's-self at risk in order to provoke changes that are necessary. And I profoundly believe that a real deep change is needed in physics, and I'm very well accepted by those who have also studied this. There is another sphere of activity which is also different, and it's called governance. Throughout my entire career, I was a member of important academic committees – and that was another sphere which requires a specialized work – and this I also did and did well, in my opinion – certainly there will be disagreements with colleagues, and heated moments – but it's something I did very responsibly. That's how I see things.

H: Sir, it's 4:30, I think it's an appropriate time.

A: OK, we'll break and see you tomorrow morning at 9:30.

H: Yes, sir.

*(End at 4:31)*

Thursday, June 13, 2013

*(Continuation of University cross-examination of Denis Rancourt)*

*(Begin at 9:42)*

H: Just one more article that contains an interview with you, Dr. Rancourt, I wonder if you can identify it please?

R: Uh, one the question of voice recordings – I had supplementary information – especially about what we talked about yesterday – so perhaps I can start with that to complete my response as yesterday?

H: I'd ask that you not until we've seen the documents produced that might be arguably relevant. You'll have your chance, but after I've seen the documents. This article appears to be an article featuring yourself?

R: I'll just read it now.

A: Exhibit 154.

R: I have a feeling that there were comments to this article and I do not see the comments there.

H: If your counsel wants to go and get those comments for re-examination, he can do so. I'm just interested in the content.

H: Did you give this interview on March \_\_\_\_?

R: Yes.

H: My first question is just related to the accuracy of this portion of the interview – it says “How is it possible to give every student an A+ -- don't we need some kind of evaluation?” – the answer given is “you put A+ in the box, it's quite easy” – do you have any reason to believe that's not an accurate rendition?

R: No.

H: That completes my questions on this document.

R: I want to complete my answer – in isolation, this is not complete and can give a false message – you have to look at the context – it suffices to read a bit further down in the paragraph – it says “and with that simple move, you remove the instrument of power in the classroom... my job description says nothing about rank-order of students... it says ‘optimize education’” – so I think it's clear that in this response I wanted to undo a supposition in his question, which was that it's not possible to give A+ -- so I wanted to address this in a short and

punchy response – but you’re missing the meaning of this if you take those words on their own, in isolation – you’ll also see in the same interview, that he asks me a question about Anarchism – “if you are really an Anarchist, what would you say to someone who says that rules are necessary in the academy?” – I say “I agree: Anarchists are not against rules and organization – they are against undemocratic structures – they are against unjustified hierarchies...” – so I address the interviewer’s presuppositions. You have to look at the context. Sometimes my answers can shock people – I’ll say “Yes! I give A+’s” – but then I will fill in context that causes people to think more deeply about the subject – you’ll see that I had a pattern in how I interacted with the media in response to this question – my reason for doing this was exactly for the reason to open debate on the question – the idea that all students can individually excel in their individual learning at that high level – students’ and professors’ authentic engagement with the subject matter – it’s to break this conceptual constraint that is imposed by the majority which desires that a mark represents the satisfaction of the professor in relation to an external criterion.

A:                                You say... the marks imposed by the professor...

R:                                A mark that represents...

M:                                The satisfaction of the professor in relation to external criteria.

R:                                Yes. So there is this very high barrier – the thinking is biased towards the “rank-ordering” system – so all the media questions have that as a starting point, and my first task is to break this supposition – to confront the person who asks that question and challenge them – to say “it’s reasonable that there would be many A+’s, because we’re evaluating the individual progress of the student”. I think that this media approach is very effective. I had the occasion to do an interview of about, I think 40 minutes, on TV Ontario, where...

H:                                Excuse me sir, I’ve given the witness ample opportunity to expound on his comments – I ask him to move on.

R:                                I’m trying to..

A:                                I understand, but you’ve already said on many occasions what your approach was.

R:                                What I want to do is explain another instance where the approach had a great success.

A:                                We’re not really on the subject of the approach.

H:                                Thank you sir.

R:                                OK.



H: Now, from the point of view of your pedagogy, it isn't essential that the student write a final examination in order to convince you that he or she is working at an A+ level?

R: That's not exactly right, I don't agree with the premise of your question.

H: Perhaps to give you some more context – I know – I'll give you some more context – my understanding is that in 4385/5100 several students didn't write a final exam, that's where I'm going – I'll give you a chance to answer that.

A: The lawyer's comments were made as part of the question.

R: If I understand well, the lawyer is saying that there were certain cases in 4385/5100 where the students did not do a written final exam. He puts that before us to give the context of his question, if I understand well. It is true, from my recollection – in fact we should look at the exhibit which gives the marks on who did an oral examination, who did a written examination, etc. In fact, unless I'm mistaken – I don't know which number this exhibit was – is it 62? I'm not sure. No. There is a table with the marks for the exams.

H: Perhaps 51, if I can help.

R: 51? No those are the marks in the other course – ah yes, these are the marks submitted at the end. But when I gave in my exams there was the information about the exam marks – let's start at the beginning – exhibit 77 is the cover letter that I wrote in order to give the final exams – the original copies – to the Employer – it's dated March 26, 2009.

H: Dr. Rancourt, I think I have the record – it's not in evidence, but if you want to refer to it, that's fine.

R: OK, I definitely need this to be an exhibit to answer this.

H: Let's use a paper copy for now then we'll upload it later.

A: This will be 155.

R: So 77 is the cover letter when I gave exhibit 155 to the university. This cover letter had as an attachment "other relevant communications include my emails of July... 2008, August... 2008.... I'm certain I attached exhibit 66 to this – so I don't understand why that's not on here. 77 is definitely an incomplete exhibit. So I attached 66, and we should also put that up – ah yes, I said in the March 26, 2009 letter – "as I explained in Jul.. 2008, the final exam was not a key element of the grading... I explained the method.. I attach the communication for your convenience" – it was clear that I attached the July 16, 2008 letter and that should be part of the exhibit 77 and that's not the case. But, we find the July 16, 2008 letter at the exhibit 66. Turning to 66, it's an email of July 16, 2008 sent by myself to Dean Lalonde, and in this email, I explain in detail the place of the final exam in my evaluation. For example, the place in this document

where I explain the place of the final exam begins at the end of pg. 3 of this email. I'm looking for the part "The final exam that you were so keen to analyze..." – OK, so starting from that sentence up to the end of the email, I explain the importance of the final exam in the evaluation of the student. I explain how I did it, but in the global context of evaluation of the student. So this email of July 16, 2008 is very important because I explain my evaluation system to the Dean. I think this is the place where I explain my evaluation system in more detail, and how I proceeded. It's exactly the method I explained yesterday, so I can identify the paragraphs which are important in this document – about the 6<sup>th</sup> paragraph

A: Which document?

R: Email of July 16, 2008.

A: At pg. 3 still?

R: Starting at the beginning now – exhibit 66 – going down to 5<sup>th</sup> paragraph.

A: Where are we in relation to the question that was posed?

R: Well the question, as I understood it was – where was the place of the final examination in the evaluation of the student, in the context that some of them were oral instead of written. That's how I understood it by and large.

A: OK.

R: So we are in the most complete document regarding my explanation of this to the Dean.

H: Sir, just hold on – in the interest of efficiency, the witness has quite properly referred to this document, but the document speaks for itself – counsel can refer to it – I just ask that you keep in mind, if your rationale is there, you don't have to keep repeating it. I just asked you a simple question – just tell us if exams are essential. I implore you to try to condense this.

R: Because you give me the choice, because this is one of the most important documents in the entire case, I would like to take a bit of time to identify some of the key sections of this document. Since you give me the choice, I don't think this would be wasted time. So, if we continue – on the first page – we'll see at the 5<sup>th</sup> or 6<sup>th</sup> paragraph, a short paragraph saying "I did not assign all A+'s based solely on attendance or irregardless of academic performance" – this was to make clear to the Dean that his concerns were not based in fact. Then, if we go about 3 paragraphs further down, on the next page, there is a paragraph beginning below the last page "I explained that therefore it was necessary to remove" – this is a key paragraph because I explain that "under these conditions I fully expected every student who participated under this method to experience exceptionally results, and so I expected every

student to achieve A+” – I did not put constraints such that students would not receive A+ -- then “all students from the benchmark... varied backgrounds varied technical abilities” – so I explain the student-centred method, and then further down, I explain the reactions of some of the students, and the paragraph “even some students who were initially angered by my non-traditional approach generally responded that they were working things out on their own or by creating workgroups, rather than simply handing in assignments because they were due”. Then, two paragraphs further down, I say “I did intervene in some cases where I found a few students to be learning focus, or losing interest in the learning experiment they had accepted”. Except for one student who dropped the course, the interventions were successful. And then, there is a title – and this is the section regarding the final exam – the title is “The Evaluation Method and the Place of the Final Exam” – so this explains the place of the final exam – I don’t want to read this entire section, because I’ve already put the emphasis on the last paragraphs – the last 5 paragraphs are really the concise summary of the place of the final exam – so we come to the more precise question of Mr. Harnden – I explain that the final exam is different from exams in the traditional method – where it starts “the final exam you were so keen to analyze – is not a key element in the grading. If the work during the semester was not well demonstrated, this could not be compensated by a final exam” – this is an important distinction with the traditional method – lack of work during the semester could not be compensated during the final exam – students had to work at a high level throughout the entire semester.

H: Are you finished sir?

R: No. The next paragraph – I speak about the nature of the exam – I say “it was oral in pieces, written in any form that the students desired, and needed to be received by April 30” – and I say “it was also as interactive with me as the students wanted” – in several cases I contacted the students about the examinations to follow-up and clarify with them. So, I continue like that, and say in the last paragraph “I hope this helps – as I have already stressed – please contact me if you wish further explanations”. And now I would like to add something very important – I want to add the following thing: it had happened in my career, that during my 20 years, that one or another student complained about a mark that I had assigned. And the method followed by the Physics department in a case like that, was that the professor who we had asked to investigate the complaint – the first thing that professor did, before looking at the work or exam in question, the very first thing was to come and see me and to ask me what method – how did this work fit in to your pedagogical method, and how did you evaluate this work? In other words, a professor to whom was given the task of examining a complaint related to a student’s work, his first object was to understand how the work fit in with the professors method and how the professor evaluated the work. This was the first step in my experience as a professor. I find this to be an important point, because that must always be the first step when one wants to call into question a professor’s evaluation of a student, and I think that the Dean was very aware of this practice.

H: I’ll ask you to refer to exhibit 146 – the final exam of “Student G”.

A: Is it 146? Final exam of?

H: Student with initial “GG”.

R: OK, I have it.

H: I’m essentially just going to give you an opportunity to comment and I’ll refresh your memory – I highlighted with Mr. Marchand last day – the portion of the exam where the student did a google search on glass in relation to subjects like Britney Spears and Einstein, and he then referred to an experiment around breaking beer bottles, which he was apologetic that he didn’t get finished. So, I highlighted those points and wanted to give you an opportunity to comment – I expect you’ll highlight what you discerned from him in oral interviews, and I wanted to give you a chance to do that.

R: The first part – the question was long – I’ll refer to your first statement, which I don’t agree with, because it’s not a good characterization. You said the student tried to show his knowledge by doing a Google search and by using different search terms. I would say this statement is false because, his only goal here, and it’s clear from the text – his only goal was to demonstrate the broad social interest in the material called glass, for example compared to plastic. There were more Google results for glass than plastic, which is interesting, and it was comparable to metal, for example. So these were key words. Then he added, as a point of comparison to these three materials, he added Britney Spears, who had clearly less results than any of these materials, and also Einstein, who is a famous scientist, and he had about half the results of Britney Spears – so it shows that materials are very important and that glass is very important among materials. I admit he used humour, but that’s fine – I don’t have any other comments about that – it wasn’t in the effort to demonstrate his knowledge, it was to demonstrate a link between the material he studied and society, and their applications, because it’s often engineers doing google searches on materials. Now, excuse me, but I’ve forgotten the 2<sup>nd</sup> part of your question.

H: Well, I remind you of what I’ve highlighted in my questions with Mr. Marchand – the other aspect was the student’s reference to this – perhaps we could call it an experiment involving breaking beer bottles – it was simply so notable that I wanted to give you a chance to comment about how this displayed that he deserved an A+.

R: I don’t agree that this is what showed he deserved an A+ -- that is contrary to everything I’ve said this morning.

H: I simply asking you to tell us if it’s something that you evaluated him on or not – I’m giving you free reign.

R: OK – well glass breakage is something I studied with this student – “GG” in order to not name him – we had a lot of discussions during the semester, and during these

discussions, I insisted that he should find something related to real-life applications – because that’s what he wanted to do – but using fundamental science to understand it – so he researched the scientific literature, I researched the scientific literature – I don’t remember exactly what journals, but one article was in the journal of highest renown in physics, *Physical Review Letters* – and it was about the microscopic nature of glass breakage – it was in the area of tribology, something I knew about already – I brought him my article, he brought me his, and I found that he had found useful articles in materials engineering, but I wanted him to look at a higher level, at the microscopic nature – I encouraged him to look deeper and asked him to focus on *Physical Review Letters*, and the state-of-the-art in physics in that journal – so we had a back and forth to understand these phenomena and I was very happy with his work – he wanted to put it in practice to observe some of these phenomena himself – he spoke about glass breakage, and I thought it was a good idea – he started during the semester, he explained it to the class and described it, he started explaining his observations to the class related to his experiments about glass breakage – he had very interesting observations, and when we found those we tried to relate them to the fundamental theory to understand the physics underlying those observations – glass breakage patterns, relationships between parts that break and the curvature of the glass, we talked about all that, and he immersed himself in this work throughout the semester. Then, at the final exam, I demanded him – I gave him the occasion to speak about the course in general, etc. – and this is what he sent me. So, given this first effort that we see, I communicated him orally two times, which we can see from my notes here...

A: One second..OK.

R: ...I don’t remember this from memory but my notes say two times – so we discussed in more detail, and one of the interesting ideas was to do the experiment in the dark to see if there would be some light emitted and I found this to be very interesting, and related to the articles we had read. So that’s what I remember.

H: Just carry on, sir.

R: No, I think that completes my comments.

H: Sir, just to be clear – you expect us to believe that this student exhibited to you in these oral interviews and in class interaction, an A+ knowledge of the course, notwithstanding that it’s just a little difficult to discern that knowledge in his final exam?

R: No, I don’t believe in your expectation – you, especially yourself, are trying to put forward this argument, but I’ve already explained to you that the goal of my evaluation was not to evaluate – I mean, the A+ does not mean a perfect understanding of all things mentioned in the course description, because such a thing is strictly impossible, I would say absurd. It wasn’t not a consideration and it’s not a consideration in the traditional method either. I have no more to say about that. I think I’ve already explained, and what I explained about evaluation applies perfectly to each evaluation and this case in particular.

H: You have exhibit 155 in front of you? Yes, I want to confirm – if you gave the students an oral exam ...

R: The oral exam in question, I must have given a certain flexibility, because there were times when, because of students who had work, or were beginning a graduate program, or were travelling in other countries – sometimes I allowed students to do the final exam before the official exam period, or even maybe after the exam period. I think I had a certain flexibility regarding timing of the final exam or exams.

H: Sir, I don't want to interrupt you – I simply asked you to explain the chart.

R: Yes, that's what I'm doing – the fact that there is an "O" doesn't mean that the oral exam only took place once. In some cases there were several cases. Sometimes I accepted doing it by telephone, when a student couldn't be on campus. This is in order to explain the precise meaning of "oral" here. If I put an "R" for written, that doesn't mean that there was no oral exam. But the "O" means there was no written part, and the final exam only had an oral component – to the best of my memory. I think there are dates beside the "O"s – I think those numbers are probably dates – for example, the first student, who's name starts with a "B" – I think it indicates April 28. In that manner. Some are April 29, April 30 – so there are some places where the dates of those conversations are indicated. May 2 is a date that perhaps indicates an exam that was done later, and there is one case where there is an "O" in the column, but then later a "+R" which perhaps indicates that a written exam was added later – I don't remember exactly.

H: Could you just comment on the student who's last name starts with "P" – and to refresh your memory, he testified in this proceeding – it would appear from exhibit \_\_ there was no oral exam – could you confirm that?

R: OK, the student we call "D", is that right?

M: Yesterday we were calling him "D".

H: Yes, his initials are "DP".

R: I want to say, the "R" does not necessarily mean there was no oral exam, but the "R" does mean that there was a written exam.

H: I notice there wasn't any "O" there, so that's why I was drawing that conclusion, but you tell us what you recall.

R: It's exhibit 11?

H: Yes.

R: OK, this examination copy had a – you see it had a “+O” written on it.

H: I had read that as a “C” – but you presumably made it, so.

R: No, it’s a “+O” – the copy you made is missing a part of the “O” so it looks like a “C”.

H: Are you sure you?

R: No, here it says “+O” with quotation marks. Let me read it and try to get the exact sense of this. Yes, so, to my recollection – because I’m remembering the context – I counted as a component of the oral exam, the contributions of this student in class, because he contributed a great deal to the super-conductivity portion of the class, and he was one of the most motivated students to create a working group on that topic – and I remembered his questions on this in class – and I considered this to be an important part of the oral component of his exam – in other words, when I read his written exam, which is very succinct.

H: Succinct? Yes, that’s a good word for it, isn’t it?

R: One and a half pages – when I read it, I know what he meant thanks to his interventions in class. I remember, from memory, his exchanges in class related to super-conductivity – I remembered that and made the link between the sentences he wrote and his understanding – I have to add that super-conductivity...

A: One second.. yes.

R: I have to add that super-conductivity was the most complicated subject in the course – probably the most difficult – the people who discovered super-conductivity won the Nobel prize, and it’s really a complicated field of study – for example, there’s a sentence here that leads into that discussion. That’s it. So that formed my judgement at the time.

H: And were you even mildly disappointed that this student, in a 4<sup>th</sup> year physics class, when he’s given an opportunity to display his knowledge of super-conductivity, could only muster a page and a half?

R: What you are referring to is the traditional method – in my method, there was not this expectation, because the student, by writing his final exam fit into the context of all his work throughout the semester – each student, writing this written work, knew that it was considered as part of this global evaluation, and therefore did not feel the necessity, the stress, the need, to demonstrate everything at once because we had already evaluated, continuously, their understanding and work. So the students satisfied my request that they submit this, to remind me of what they had done during the semester – this was the goal of the final exam, and students understood it that way.

H: Sir, I'll remind you – we heard from these students – they understood on the first day of class they were going to get an A+ -- and isn't it possible that's why this student gave you only a page and a half – isn't that possible?

R: No, I think that, especially at the end of the semester all the students had a good understanding of what was going on – it wasn't the quantity but the quality of their understanding – not the number of words, but the link they had with the student's understanding and the work he or she had done – that's what counted, and I think all students understood that by the end of the semester, because there was an intervention with that student – he did change his attitude and approach dramatically in the course. It had a great effect, and I was a witness to it, and his exam reminded me of that. And, his exam restated the essential points. I prefer an exam that is succinct – because when students are stressed, on a final exam, they might write us many many pages with all kinds of equations, without understanding anything – sometimes they will get very high marks with that – I told them “I'm not looking for a demonstration of quantity” – I would have said that at the start of the course.

H: You mention the student's attitude – did it come to your attention that this student took this very same course over from a different professor?

R: No, I don't have confirmation – I heard rumours, it made echoes as a rumour, but I don't have knowledge of that.

H: Appropriate time for a morning break.

A: OK, we'll take 15 minutes.

*(Break at 11:03)*

*(Resume at 11:17)*

*(Lawyers exchange documents)*

M: I assume we're not going to be reproducing the page

A: What do I do with this link? What we got on Tuesday afternoon, if it has to be entered as evidence?

M: My suggestion is: we looked at the link as what we'd do with it...

A: I won't refer to anything that's not in evidence. It's up to you.

M: My impression was we looked at that as part of the evidence. I'm not proposing that we put it into evidence but you can refer to it as something you saw.



A: I understand that the document in evidence contains this link, and all I would have to do is type this in and I would get there.

M: That is true, but also, we watched this video, so if you try to describe what we watched, it's at that link. In your narrative, if it's something you go back to.

R: But I have experience with Youtube – often it's Youtube itself that changes things, and sometimes it's the user that changes it. The content can change and evolve over time. The Supreme Court is clear on this – a link is a reference, not content.

M: So you could describe it in your narrative.

A: Is it possible that you make a video of what we had, the same way another video was entered into evidence. That way I could click on it and view it.

M: What we can do is – there are certain programs, sometimes questionable...

A: I'll leave you with the technique of it, but I want to be sure that technically it's part of the evidence and we enter it in evidence and give it a number, and this way, I'm gonna look at only what you have entered into evidence.

H: We'll have that discussion over the lunch hour.

M: OK.

H: I'm just gonna put to you a portion of Dean Lalonde's evidence...

R: But, I understood that after the break I would come back and complete my answer of yesterday.

H: I just received the documents – I'll review them over the lunch hour and then give you every opportunity you want.

R: OK, thank you.

H: Just going to refer to a portion of Dean Lalonde's evidence and let you comment. He said "you don't have to grant A+ to everybody for very long before it gets to be known and colleagues at other universities qualify your program as "Mickey Mouse" – news travels very fast" – do you share Dean Lalonde's concern on that front, in terms of the pedagogy that you were following and that resulted in all your students getting A+'s?

R: No, not at all, and I'll explain why – to start with, it's common that there will be certain advanced courses in a program where all students receive a very high mark. It's

not that rare – I think Mr. Marchand mentioned 4 or 5 times in his student career in physics at the UofO – it's not rare that all students in a class at the end of undergraduate or in graduate studies receive high marks – averages are often very high in those classes – we have that expectation for a student at the end of his undergraduate program – it's known and part of the system – that's one thing, but it also must be considered that it's a certain number of courses, not all the courses in the program and all the students, but some courses which, in my case, used a very different method where the evaluation method had a different meaning because it was of a different nature -- student-centred. So, in my mind, using this technique and exploring this pedagogic technique – gives a very good reputation to the university, because universities that have started to explore this method are considered progressive – I have two examples in mind – UBC, in the recent past has hired a Nobel prize winner who is interested in pedagogy and wants to explore very non-traditional methods – there are researchers in the PER domain who are hired around North America to introduce these new ideas, and this is considered very positive – MIT, for example, has made advances in this area. One of my former students, who I supervised in her graduate studies, Prof. Paula Heron, went into this area of research and is now a professor at the University of California, and is part of a research group on this. She gives workshops on these methods to people who want to try these methods – I invited her at the time to speak about this at the physics department at UofO – the first thing she said was that the research shows that the traditional method does not work – students do not learn the concepts. As these methods become more and more accepted, universities that try to get past this difficulty are seen very well, it's seen very positively – and this obligates – I mean, this changes nothing regarding the selection process of students by other departments or employers, because these other institutions – the best selection tool they have are interviews and independent tests – e.g. the “GRE” in the United States. These methods are considered much more effective than marks, no matter what the marks or the university. There's no reason to conclude, as the Dean did, that it would be “Mickey Mouse”. He's right to say that when we start something new, and it's supported by the university, it will be known in the community – but if the University supported it and said “look, here's what Professor Rancourt is doing” and invited students to try this, that would have brought positive reputation to the University – so I don't agree with this conservatism on the part of Dean Lalonde – not at all – I believe it's misguided and based on a displaced conservatism – it's displaced because it's inconsistent with this research result that shows that the traditional method fails completely – fails completely! – and when a student begins to do research, the professor must look at how he performs independent of his marks and transcripts – so it is a myth projected by administrations that we cannot explore things other than the traditional method, because it has been shown that it does not work. And I've exchanged a lot with colleagues when I went to conferences about pedagogy in physics, and they shared with me that there is often a strong resistance when they go to other campuses, but if the administration is willing to accept them, there is always a good result. So I think the Dean's error is in not wanting to discuss with me and not wanting to consider, in a just and equitable manner, what I wanted to discuss with him, and to completely close the door to the possibility that this approach could have been very advantageous to the students and the department of physics.

H: Can you confirm there's an English language paper at the UofO called *The Fulcrum*?

R: Yes.

H: I'll show you an article, you can read through it. It touches on this issue.

M: Who is Amanda Shendruck? So is this an opinion piece in *The Fulcrum* that...

H: I'll tell you where I'm going – I could have just read the quote, but I anticipated he'd say "I need to see the context of the article" – the quote is "not only physics students... science students .... BoG... speaks volumes... Rancourt has created a hostile..."

M: Before we read that, there are a number of associations who have said various things about this case – positive and negative. I assume we're not going to get into a battle about "this association supports Prof. Rancourt and this association does not" – I don't think that's right.

H: I thought it was within the bounds of cross-examination to put to the witness this statement about a group to the Senate about this professor – I thought that was fairly ordinary cross-examination technique.

M: It's not relevant – we don't know what facts this association had – there are facts related to the proceeding – some are pro and some are con. That's not the issue.

A: I would agree with Mr. McGee.

H: Understood. Now we're gonna turn to, I'll show this to Mr. McGee in case there was any concern about producing it. This is the petition from the professors, and I'll speak to the basis for it. I'll just explain the – not going to refer to the contents – frame why I think this document is relevant – one of the factors in terms of your decision is whether to reinstate – maybe you will not need to make that decision – but one of the factors is his relationship with other employees – the document I propose to tender is a petition by 52 professors – members of the Association (*union*) -- my submission at the end of the day is there is an illustration that there is such a relationship between this professor and other members of the faculty such that reinstatement would not be an appropriate remedy.

M: My understanding of this document is that it was a document where the undersigned said, at least in part, "we believe that Prof. Rancourt takes the position that he can teach things other than what is provided in the course description, because he says that he can squat" – we have an explanation for academic squatting – more importantly, it's not the time we're talking about – Prof. Rancourt continued to be an employee of the University for years

after this particular termination – so if the question is “at the time of his termination, were his colleagues against him” it’s not relevant.

H: Notwithstanding this is April 2007, it illustrates the friction that flows from Dr. Rancourt’s approach and the nature of the relationship – the friction between himself and other members of the Science faculty – I’m not tendering it to prove the allegations that the professors make – just to illustrate it shows friction. Dr. Rancourt can say “oh no, I got along with everyone, had a wonderful collegiality with my colleagues”. But Mr. McGee and I can argue that.

A: I will allow the questions, because I think they are arguably relevant to the reinstatement issue.

H: Should we mark that?

A: We’re at 156.

R: So do I need to identify the document?

A: Just a second – it’s understood it’s not to prove the content, but that there exists a friction.

H: That’s correct. Just turn to that – can you identify that?

R: OK, I will read it carefully to make sure.

H: Just so you understand, and only to be helpful to you, in the interests of time, my only reference to it in this proceeding will be what it indicates in terms of your working relationship with fellow members of the Faculty. I won’t rely on it for any of the allegations.

R: OK, I just want to read it – it’s just one page.

H: Yes, I’m not going to prevent you.

R: There’s a French version and an English version, so I’ll just read it quickly. OK, I read the English version, because I assume you’ll cite from that.

H: Can you confirm this petition was filed by professors in the Faculty of Science requesting the administration take action to restore serenity to the Faculty of Science?

R: Yes.

H: Can you confirm that the subject matter of the petition was your actions.

R: Uh, in part, but I think that the grand theme that is expressed is not my actions – because there's nothing very specific about my actions – the grand theme is that the people who signed this were bothered by me, or were bothered by the arguments presented. I think the theme is that these colleagues were bothered enough that they would sign this letter. If I could synthesize it as briefly as possible, they expressed a discontent towards me and this is an expression of that discontent. But I notice, and noticed at the time, if we look – give me one second – the Dean said there were 52 – I didn't count, but originally they hid the names from me – I wanted to know the names, but at one point some people left the list – 52 represents a third of the professors in the Faculty. So, the way I see this is – despite that all the Department Chairs and the Dean encouraged this petition – I know one of the organizers was the Department Chair of Chemistry, Mr. Alain St-Amant – despite the fact that the administration encouraged this, there were at least two thirds of professors who deemed it proper not to sign this petition – I also must say that the goal of a Faculty of Science is not serenity. It's rather rigorous debate and difference of opinion – it's these debates and differences of opinion that change things. I can also add we would have difficulty finding, in North America, a department where there were not clans, and groups that opposed each other, of all kinds – it's rather the norm in the academic world, and that occupies the great majority of discussion at coffee meetings and at many committee meetings – the academic world is not a “serene” world where researchers are isolated in their offices and contemplate, serenely, and advance their ideas – it happens through debate – pedagogy as well advances through debate – I don't want to get into the details of how researchers confront each other and why, but this kind of thing is the norm in academia. We would not have to look far for an expert to confirm this. I would even go further – I would say that when there are real differences of opinion that that is a sign of vigour and that things *brassent* and are advancing – I can tell you with complete certainty that I respect the opinions of these professors – I appreciate that they express themselves, name themselves, and give their opinions. I look at some of the physics colleagues who signed – they are some who I consider are still friends, and I still worked with them even after this letter. Some of them were even co-authors on scientific articles – so there was a collaboration – nothing in this political discourse changed the fact that we shared the same laboratories – I was in charge of the physics department's chemistry lab – and these professors continued to use the professors and I continued to manage the laboratory – none of this changed my work and my collaboration with them – I could have the same discussions in the hallway, ask help from professors who had technical expertise I did not – I remember continuing to have deep discussions about research with Professor Zbigniew Stadnik, who signed this petition as well (pg. 9 of 17, from what it says on the page). Prof. Stadnik and I had several common interests in our research, and we continued to work on these things after April 2007, the date on this letter. Prof. Stadnik continued to use my laboratory – none of this changed because there was a letter signed. I had expressed my opinions for a long time and sent emails to my colleagues for a long time – I think the first mass email I sent to express concerns was in 2004 or 2005 – it gave rise to discussions, colleagues who called me to discuss – my severe criticisms and my positions changed nothing, from the time I started that, and others started doing that as well, about our professional work and our responsibility as

professionals to emit opinions like that. I think everyone respected that. There were some who did not appreciate receiving emails, but I think it was because they did not appreciate the points of view expressed in those emails. There were also letters to the editor in various newspapers that professors wrote – there were often criticisms in all directions, and often very pointed criticisms, but this did not stop or change professors from doing their professional work. I heard from colleagues that the administration asked them to sign the petition, but this didn't bother me – I felt that, even though it was collective, it was an opinion – it didn't bother – I don't at all agree with the factual content, but I do agree that one can make criticisms like that. And this petition opened the debate on campus because, if I remember well it was submitted to the student paper and might have been published – I don't remember – but it opened debate on campus and I saw that as a good thing. For me, it's positive when there are strong debates – it shows there are important subjects – the stronger the debate, the more it shows that the debate is significant and it touches at the heart of the question.

H:                                 Sir, you said you're such an advocate of debate on the campus, but isn't it the case that you engaged in litigation – you sued Prof. Hodgson for something he said on campus – it doesn't sound like you're a big fan of debate?

R:                                 If this question is permitted, I can respond – there is a lawsuit that I launched against the former Chairman of the Physics Department...

A:                                 The former professor...

R:                                 No, the former Chairman – his name is Richard Hodgson – this came about because he wrote an official letter that contained falsehoods – these falsehoods were about a student, and the student herself denounced these falsehoods – in my opinion these were completely falsehoods – this letter was used in the discipline campaign against me. Prof. Hodgson was asked to write such a letter, he wrote it, the facts in this letter were then contradicted – it's important because this letter was used in the file against me – it's not a question of expression, it's a question of wanting to do harm to someone by, in my opinion, fabricating something. When it's the direction, and the power of my employer used in that way, I think it's more than legitimate to defend one's-self.

H:                                 Are you finished sir?

R:                                 The parts of the conflict that touch on that question – we have excluded them and now I'm talking about them, so that surprises me – but this touches on another component of the conflict – a different grievance.

H:                                 On the subject of your conflict with other professors? Want to be sure we're on point here.

R: No, it's about how with Mr. Hodgson – the process against him touches on a separate grievance.

M: One of the matters we agreed would not be before Mr. Foisy.

H: Maybe we should leave. I don't want to say anything inappropriate.

*(Lawyers meeting in foyer)*

H: Sir, Mr. McGee drew my attention to the fact there's an agreement the parties would stay away from a certain subject because it's not relevant to the proceeding. I agreed that the reference to this litigation would be only that and nothing further, and on that understanding we're going to proceed on to other subject matter. Now, Dr. Rancourt, you may recall – I appreciate it's some months ago – but, when Dean Lalonde testified, he made reference to an interview which you conducted on something called *The 5 O'Clock Train* – I'll give you a copy so you can refresh your memory. Can you confirm that you did conduct an interview on the occasion indicated in this document?

R: OK, I don't know the origin of this document, I've never seen it before – I think it was produced by Maureen Robinson, and I've already explained the reasons for which I doubt the precision of the reports of Ms. Robinson, who was the student...

H: I don't think we need to get into it, you spent about a half hour on Ms. Robinson and your concerns were well articulated, and I'm sure the Arbitrator remembers that.

R: OK, I don't remember this – I don't remember if this interview happened – there may be a recording on the Internet, I don't know – but I did one interview per week over a period of many years – so I did hundreds of interviews and I don't remember the name of this person or this interview, but it's entirely possible and is consistent with the kind of theme that would have appeared on my radio show. My show had a theme that was very large, and included activism and student movements – it also took in climate change, atmospheric science, etc. – but I don't remember this.

H: If I could assist – I accept when the witness is saying he can't identify this document – I'm trying to get at Dean Lalonde's evidence – I'll approach it this way – Dean Lalonde explained that part of his concerns that lead to closing of the lab was this interview which you gave on the subject of some activities on the UBC campus, and he pointed out that shortly thereafter, there was violence on the UBC campus...

R: No, I don't remember that...

H: I'm just trying to tell you sir, I'm not trying to trick you at all – Dean Lalonde discerned something and I want to allow you to comment. And, I'll assume that the

Arbitrator will go back to this passage, so I'll read it quickly: "interviewed someone from Queen's – student activist expressed discontent about fence put around a parcel of land which was intended to be made into a bus terminal – Dr. Rancourt expressed if he was in the students' place he would take down the fence and protest – message was one of inciting protest – a few days after, vandalism was done on UBC campus – so I would be concerned about safety on our own campus".

R: I don't remember his evidence, I'm sorry – I don't doubt that he said that – but did he say he heard the radio interview, or he read a report?

H: It was in response to your counsel's questioning, and it's not apparent from the question and answer – it doesn't refer to if he heard it or read the report.

R: Hmm. Because, my first response is that it seems to refer to when Dean Lalonde spoke about Marc Kelly's actions in class without ever seeing them, by reading a report. It could be a similar example, where he based his comments on the report of Maureen Robinson – I don't know, that's a first comment. Well, what is the question?

H: I just want to give you a chance to comment – what Dean Lalonde suggested is that some of your comments – I'll read the words so I don't put any characterization on them "Dr. Rancourt said that he would take down the fences and encourage students to protest".

R: Wow. I have no memory of the interview – my sense is – the link between an interview on the radio and an event at UBC a few days later – my sense of that is that it's completely ridiculous – I find this – I mean, if I was the Dean, I would be embarrassed to say a thing like that – that's the only response I can give.

H: That covers off cross-examination save documents you produced – about the documents – my position would be that they get into what Dr. Rancourt was referring to yesterday – the improper behaviour of the University regarding Maureen Robinson – in terms of the cross-examination of Dr. Rancourt with respect to his personal video would be relevant.

M: It was a radio – an audio file?

H: What was referenced in his document as a "personal audio recording" of what happened at the event at Queen's – whether there was another audio is beside the point – it doesn't speak to his personal audio recording.

M: My understanding was that the suggestion was that Dr. Rancourt had a personal audio recording and that if he had it he should have produced it. I intend to put documents forward that show the University was in possession of such a recording, and we've never seen it or had it.



H: I can tell you we had a recording, but I can tell you we do not have it.

M: I understand, but one of the things that was put to him was that if he had such a recording but that it no longer has that would be very serious – and these documents show that counsel for the University – not you – but counsel had this and lost it.

H: I would say if you want to delve into it you should do that in re-examination.

A: You can complete part of your testimony after we...

R: In order to complete my response from yesterday – Mr. Harnden told me I would have the opportunity to do that.

H: He will do that in re-examination.

A: No, he wants to complete his answer to the questioning of yesterday. We told him that would be done after the break because we thought it was relevant to the documents exchanged at that time. It appears now they're not really related to those documents, so..

M: As counsel, I don't object to what Mr. Harnden says, which is that we end cross-examination.

A: OK, so we'll break for lunch.

M: Can we come back at 2:30? There won't be any difficulty completing today. We have some preparations before we continue, so 2:30 will actually make things shorter.

A: So, do I understand that we, at this point, will not be using tomorrow?

M: I don't expect that, but you never know with objections, etc.

A: Yes, ok, so I won't check-out of my hotel room just yet – it's never over till it's over.

*(Break at 12:34)*

*(Return at 2:49)*

H: ... we made extensive efforts to locate that audio recording and couldn't do so. Leave it to argument.

A: We're now talking about the comments Mr. Rancourt wanted to make about his testimony of yesterday?

M: Yes.

R: OK, yesterday, I was asked a question about a document, which was Exhibit 151, and I was asked what was the meaning of the date at the top, which was January 2010. When I did my search for an audio recording file, at the same time I looked over all the documents associated with this, and I was able to determine that the date this file was created was December 29, 2009. That means that all the content of this file dates, at the latest, to December 29, 2009. So there was a discussion about my lack of memory on the date, and so I wanted to give that clarification, that's it.

M: Thank you. You were asked a question regarding the petition signed at the beginning of 2007. To your knowledge, after receiving this document, had you seen similar documents from your university colleagues?

R: You're speaking about the petition of 52 professors in the Faculty of Science?

M: Yes.

R: OK – I've never seen another document like that from my colleagues – that's the only petition of that kind from colleagues, to the best of my memory. It's also the only time, to my knowledge, that Chairmen and the Dean – at least the Chairmen – went around asking for signatures – to my knowledge.

M: Putting aside the Dean and the Chairmen – did you have a colleague who told you personally that he or she could no longer work with you.

R: No, never.

M: Before this hearing did Dean Lalonde tell you that he could no longer work with you?

R: Before which hearing?

M: Before this hearing, the dismissal hearing.

R: No – he refused to meet me, but we continued to have an exchange – he never told me, in his different spheres of activity – before these hearings began – that he couldn't work with me in regards to scientific work or other work.

M: Now, I'll ask you several questions about an audio file – potentially two audio files relating to your talks at Kingston and Quebec City. When you were asked "I suggest

you made that recording and you destroyed that recording” – you were told “it would have been a serious offence to delete that recording” – can we put the document on the screen?

A: Speaking about the files, we’re missing a piece – oh no, you gave it to me.

M: Please look at 2008-09-02.

A: OK, this will be 157.

M: When did you obtain a copy of this document?

R: This document, to the best of my memory, was produced by the university during this arbitration – to the best of my memory. But I was not able to verify that.

M: There’s an email of Sept. 2, 2008 from Dean Lalonde to Pamela Harrod. Who’s Pamela Harrod?

R: Yes – Pamela Harrod occupied a position that has changed name – originally it was called “Secretary of the University” and then the title of the position changed to “Vice-President of Governance”, but it was the same position, and she was responsible for the University’s Legal Counsel and questions about governance – she was the highest person responsible for Access to Information requests. It’s essentially a Vice-President.

M: And they’re talking about an audio file of the speech we were discussing.

R: Yes it’s about the Oct. 18, 2008 event.

M: The speech you gave on that day?

R: Yes.

M: It says “since this audio file was given by myself to Michelle”, who are we talking about?

R: It’s certainly Michelle Flaherty, who was the Legal Counsel of the University.

M: And it says “I presume the file will be excluded from the FIPPA request” – so you made a FIPPA request?

R: Yes, it was the file that had the University’s file number listed in the email \_\_ \_\_\_\_.

M: So the file existed at least on a CD-ROM – it says “I have not given you a copy of the CD since you have access in Michelle’s files” – so you would say it must have existed in the Dean’s office?

R: Absolutely.

M: We understand in this hearing that the University says it does not have a copy of this file – when you did your FIPPA request were you given a copy of the file or the recording?

R: No, they did not give me a copy.

M: Did they tell you that an electronic recording or audio file existed?

R: No – the University didn’t give it to me – they had an obligation to under the law.

M: OK – that last part is not something we’re putting before the Arbitrator. I would like us to look now at the document 09-06-26.

A: OK, this will be document 158.

M: I want to look at pg. 1 under the title “Wrongdoing” – here it’s referring to an email you sent with Nathalie Des Rosiers as the primary recipient – she was VP Governance at the University.

R: Yes, she occupied the position that Pamela Harrod formerly held.

M: You said “VP Academic Major and ... surveillance of my....” – were you referring to, in part, your speech in Kingston?

R: Yes.

M: If we proceed to pg. 2, under “Need to Preserve Evidence” – you filed a request to Ms. Des Rosiers – “records have not been preserved... ask that all Dr. Major’s records be preserved”.

R: I know that VP Major was aware of this recording – one of the emails that was divulged showed a person, Michelle Flaherty or someone else, asking Mr. Major if he wanted a copy of this, from memory.

M: OK – did the University at any time give you a copy of the electronic file or audio file of the recording it made at that speech.

R: No, never. I even took their decision to appeal under their was a formal appeal decision from an adjudicator, and throughout that entire process, the existence of this audio recording was never admitted.

M: We'll go to "2011-06-07 at 9:43 p.m.", another document. Sorry, before doing that – can we look at ... Quebec...

A: OK, this will be 159.

M: So, you were asked about your presentation in Quebec City and you said you would search for an audio recording of this and didn't find anything. Right?

R: Yes.

M: Does the document I put before you here represent – what does this represent?

R: This represents what can be found at the hyperlink at the top of the document – at this link there is this content – this is the description of the component, at the ACFAS conference, which was organized by Professor Donatille Mujawamariya who was a professor in the Faculty of Education at the University of Ottawa – so this professor organized this session at the ACFAS conference, and this describes everything she organized – so in this description there are the two contributions she invited me to do, which are in this document.

H: I'll just comment on this document – please sir, I don't want to hold things up but, apart from what this could mean "Do it for dad" – it was a document that was disclosed by the University, Dean Lalonde could have commented on it – to bring it up at this point could be inappropriate, but notwithstanding that I would ask you to note my comment, permit the evidence and then we'll debate it later.

M: It's a document 26 of June, 2012, from Allan Rock to Stéphane Énard-Chabot.

A: *(gives exhibit number)*

M: OK, so we asked you about a document – the University's position was "with such serious words as these...." – who was Allan Rock, who was Stéphane Énard-Chabot?

R: OK, I wanted to talk about this because Mr. Harnden...

H: I'm going to interject – I don't see how this could possibly be relevant. Mr. Rancourt had this and didn't produce it – it couldn't have been arguably relevant – but now he wants to produce it overnight.

R: Mr. Harnden has given us information that might also be false, and I'd like to correct it – he says I had access to this before – that's false – I got this through an access to information request done by a third party – Mr. Harnden is wrong about who had possession of this document. I never made an access to information request that would have given me access to this document. I obtained it thanks to an ATI request by another person, who put it on the internet, and then once I obtained it, I immediately made it public on my blog *U of O Watch*. So I think Mr. Harnden should be aware of that.

M: So, I won't ask you other questions about that document. I have a last series of questions about (*exhibit number*). You said, I think it's at title #2, on pg. 2, "the evaluation method and the place of the final exam" – you said that when you sent this email you explained the details about your system of evaluation?

R: Yes.

M: After having sent this document, did Dean Lalonde provide you with any proof of research for information, other comments, to tell you that student-centred evaluation centred was not appropriate?

R: He never gave me information that informed me of such a thing. He never presented evidence of such a thing to me.

M: So, I ask you the same question regarding the ensemble of information that can be found under the title "The evaluation method and the place of final exam" – Did he provide you with this information, with studies...

R: Pardon?

M: Did he give you proof, indications, documents, files, to suggest to you that you were wrong when you said what you said here? From an academic point of view?

R: Absolutely not – I would have a good memory of that if he did – I was frustrated by the fact that the Dean never received my arguments, never criticized them – it was as if I had said nothing at all – I remember that it was a state of circumstances in which Dean Lalonde did not address these circumstances in any manner. I have already said that I tried to meet the Dean on many occasions to have those discussions.

M: Let's go to the bottom of the document, please. There I see, as an example, "please contact me if you wish further explanations".

R: Yes.

M: Did the Dean ask you “what would be your reaction if we gave you a rule regarding evaluating students” – i.e. spell out what you could and could not do?

R: No – never – he never explored my reaction to any such suggestion.

M: That’s all.

A: Thank you. Do you have any other witnesses?

M: No.

A: OK, that leaves us with argument. So we’ll be ready for the 25<sup>th</sup>?

M: Yes – I don’t know if we want to do it here – or? Do you have suggestions?

H: Were you referring to doing it here? The hearing location?

M: No – should we have a private discussion?

H: Yes – let’s do that and figure out how it will go forward.

R: Can I just ask what stage the hearing is at now?

A: All that’s left is argument, which each party will make – after that’s done, I will render a decision based on the evidence given. That will terminate the action. So, 9:30 on the 25<sup>th</sup>.

*(End at 3:30)*

# Lawyers spar over University of Ottawa's dismissal of Denis Rancourt

BY DON BUTLER, OTTAWA CITIZEN    JUNE 25, 2013



The University of Ottawa says it fired physics professor Denis Rancourt after he disregarded a warning not to grant an A+ grade to all of his students in three classes regardless of their performance, and for reading the warning to his classes.

**Photograph by:** David Kawai, Ottawa Citizen

OTTAWA — A lawyer for the University of Ottawa described Denis Rancourt on Tuesday as a vicious bully, a blow-hard and an egotist who cares only for his own interests during closing arguments at an arbitration hearing into the former physics professor's 2009 dismissal by the university.

But Sean McGee, the labour lawyer hired by the Association of Professors at the University of Ottawa to represent Rancourt, responded that the university had no cause to discipline him and said notions of academic freedom were "absolutely critical" to the case.

The university fired Rancourt, then a tenured professor with 23 years' experience, after he awarded A+ marks to every student in three of his physics classes, allegedly defying instructions by his dean to evaluate his students objectively.

The hearing into his dismissal, which began last year, is to finally draw to a conclusion Wednesday, though it's expected that arbitrator Claude Foisy won't issue his decision for months.

In his summation, university lawyer Lynn Harnden said the case pivots on Foisy's finding on Rancourt's credibility. The "critical element" of the case is whether Foisy believes Rancourt's explanation that 47 of



his students merited A+ marks as the result of his “amazing approach to teaching,” he said.

Harden said the university’s judgment on that is unequivocal. “This is a serious form of academic fraud,” he said. “We think that’s the best term for it.”

He cited four examples of what he characterized as Rancourt’s “blatant attempts to mislead” during the hearing, though McGee later disputed the facts Harden presented in all four cases.

The most blatant, Harden suggested, was the transcript of remarks Rancourt made in 2007 at Queen’s University that indicates he declared he had not graded his students since 2005.

During his testimony, Rancourt had attributed the A+ marks he awarded his students to his innovative “student-centred” pedagogical approach and the relatively small size of his classes. But Harden said the Queen’s transcript “put the lie to all the key evidence” Rancourt had provided about the A+ marks.

Rancourt’s pedagogy “does not involve students learning a curriculum,” Harnden insisted. “It has nothing to do with grading students in an objective manner. This game (Rancourt) is playing has real world consequences. It prejudices students’ academic careers.”

But McGee said Rancourt testified that the transcript of his Queen’s comments was incomplete and lacking in context. He also pointed out that it was supplied by a student with a grudge against Rancourt, hired by the university to “conduct surveillance” on the troublesome professor.

Harnden said the main reason for Rancourt’s firing was that his dean, the late André Lalonde, directed in 2008 that he should not grant A+ marks to students regardless of their academic performance.

The university’s position, he said, is that Rancourt “disregarded that direction and did precisely that.” Rancourt awarded A+ marks to every student in the three physics classes he taught despite Lalonde’s warned that failure to comply with his direction would lead to discipline up to and including dismissal.

“You could readily conclude he was mocking the dean, he was mocking his employer, and he was basically saying, ‘Come and get me,’” Harnden said. “He knew very well the consequences of what he set out to do.”

Harnden said Rancourt actively sought notoriety and “relished the attention he was getting for this behaviour.” But, he added, Rancourt “seems to have forgotten the impact of his agenda on young men and women, both in his course and in other courses.”

A second reason for Rancourt’s dismissal, Harnden said, was that he read and ridiculed Lalonde’s warning letter to him to students. Harden said Lalonde, who died of cancer last December, was upset because he thought that was “threatening for the students to be caught up in such a battle.”

Rancourt was in a position of power, Harnden said, and by reading Lalonde’s letter to his students he was “using that power to intimidate these young people.” For all those reasons. Harden said the university had cause to dismiss Rancourt.

But McGee said the principle of academic freedom makes the employment relationship between universities and their professors unlike any other. Academic freedom is crucial, he said, to encourage

“vigorous, pointed, difficult debate.”

That freedom applies to the methods professors use to instruct and evaluate their students, he said. If the University of Ottawa disapproved of Rancourt's approach, it should have issued a general rule prohibiting it. “There is no such rule at the university,” he noted.

McGee said the university clearly sees Rancourt “as a person who makes waves.” It was telling, he said, that the first question he was asked during a key meeting with administration officials was, “You're a self-described anarchist, aren't you?”

Rancourt endorses the political ideas of anarchism — though not its more violent manifestations — but cannot be terminated for his beliefs, McGee said. “The university is committed to upholding that principle. It must uphold that principle.”

He accused the university of taking a “kitchen sink” approach to Rancourt's case, adding incidents that were never part of its original reasons for termination.

In the “unlikely event” that Foisy ruled that the university didn't have cause to dismiss Rancourt, Harnden said, he should still refuse to reinstate him, arguing that his own actions made that “just about impossible to contemplate.”

Rancourt, he said, “is a bully. He uses the Internet and his blogs to bully anyone he takes a dislike to.”

Harnden cited several examples of “vicious” attacks Rancourt made on senior administration officials involved in his firing, as well as his characterization of University of Ottawa law professor Joanne St. Lewis as university president Allan Rock's “house Negro” — a statement that provoked a bitter libel lawsuit that is still ongoing.

Harden said Rancourt “steadfastly refused” to acknowledge any wrongdoing during the hearing. “His view was that he was right on each and every issue. He's the victim.”

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Tuesday, June 25, 2013

*(Closing arguments of University)*

H: We talked about a summary of submissions – my reply, case names, exhibit numbers, all that detail – I consciously didn't include it because I thought it would be better to...

A: I don't want long submissions.

H: Yes, yes, just 10-12 pages.

David Burton: *(Approaches arbitrator)* I have a hearing problem – I may get up and stand by the wall.

A: As long as you use the last chair at the table.

*(Begin at 9:43)*

H: As you know the position of the University in this proceeding is that Dr. Rancourt was dismissed for cause – you will recall that we advanced an alternative argument that in the event that you decided there was not cause, that you should withhold the decision to reinstate. Now, we are not jettisoning that argument, but given the evidence you have heard, we do not think you will need to decide that. The case pivots on your finding with regards to Dr. Rancourt's credibility – the critical element of the case is whether you believe Dr. Rancourt when he says "I had these 47 students in these two fourth year physics classes, and I adopted this amazing approach to teaching that lead to them all working at an A+ level" – the word "miracle" comes to mind, and so you approach that evidence with a natural skepticism. And if you conclude that Dr. Rancourt was lying to you when he gave that evidence, the consequence is that this is not just your run of the mill misconduct – this is a serious form of academic fraud. We think that's the best term for it. So, you're gonna ask yourself, when you examine the evidence, can you believe Dr. Rancourt on that point? And our submission is that you can not. You cannot believe Dr. Rancourt on a whole host of points in this proceeding – but the key point is that if you find he did not give you evidence in a credible fashion, you circle back to the key evidence in the case, and your initial skepticism will lead you to conclude in light of all the other evidence of a lack of credibility, that Dr. Rancourt, in a valiant, and I must say, well articulated effort, attempted to mislead you as to what occurred. Now let's begin with some of the key evidence that touches on Dr. Rancourt's credibility, because of the importance that attaches to it. We are gonna give you 4 key examples – and I must say it took some editing, but 4 examples. Number 1, you recall the evidence of a student who testified Dr. Rancourt read a letter, and this was exhibit 48, to the students in the last class of the year And that student took notes of what Dr. Rancourt said, and he put those in an email one day after the event, exhibit 10. I'll get to the details of the conduct later, but just on the credibility point – Dr. Rancourt, in his cross-examination, says

essentially, that it didn't happen. He acknowledged bits and pieces, but in terms of the overall import of what the student says and reported in his email, Dr. Rancourt said "I don't remember, it was the last day of the year, it couldn't have happened". So to believe Dr. Rancourt on that point, you'd have to believe the student concocted highly detailed evidence of what Dr. Rancourt said on that occasion. The student even said he put quotes on certain things because he knew they were important. So unless you conclude that that student had a highly fertile imagination, that's the first point I'm going to point you to, to show he mislead you. Number 2: Dr. Rancourt's Gmail account – remember, he had a University account and a Gmail account – and I asked him about his Gmail account during cross – he said he kind of "vaguely remembered it" and that he thought he used it "to invite graduate students to a social evening" – and I asked him to go through his emails and search for relevant items, and he found nothing relevant, that's what he said. And then, by good fortune, and I have to say that the University is grateful that Dr. Rancourt suggested the calling of Philippe Marchand, a student or a teaching assistant in the 4<sup>th</sup> year physics course, and I asked Mr. Marchand "did you exchange emails with Dr. Rancourt" – and he said in a very forthright way "yes, yes I did" – and I asked him to search emails between him and Dr. Rancourt, and he came up with fourteen hundred emails! Roughly – I may be off, it might have been seventeen hundred. Now, admittedly, they were on the same google groups, and that might explain some. Among those emails, we selected a few that were tendered as exhibits, and I'll come to those at a later point. But the point at this stage is that it has to be clear to you that Dr. Rancourt had extensive email exchanges with students – he knew because I placed great emphasis on this theme – of him inciting students to violent behaviours – he was well aware that this was a critical issue – in fact he mocked that issue on his blog. And yet, he went through his emails and found nothing touching on that theme – an outright lie, because the emails found later contained – I'll try to use a neutral term – suggestions as to how students could escalate their activities. The third example: Claude Haridge – you might be surprised that we're pointing to him to show lack of credibility, because he's a minor figure in the proceedings – I asked Dr. Rancourt to bring evidence about media articles about Mr. Haridge improperly storing ammunition. His response was, and I acknowledge this is the translation from French – "no, I don't know anything about this" – "I know he was charged with improper storage, but I don't know anything about this". And I returned to this theme later on in cross-examination, and he told us "in fact I did read this last week, and that was the first time I heard that – I didn't know about the details. I read for the first time about that last week". I had asked him the day before to produce any emails between himself and Mr. Haridge, which he did overnight, and one of those emails, exhibit 150, is from Mr. Haridge to Dr. Rancourt outlining the details of him at that point being convicted of burying ammunition in the ground outside of Ottawa, the very same details that Dr. Rancourt said "oh, I don't know anything about this". Do you recall Mr. Haridge was asking Dr. Rancourt to write a support letter, because his hearing was coming up. Dr. Rancourt had obviously forgotten that he had produced an email that showed he was attempting to mislead you. He was embarrassed, he takes a closer look at it, and says "that's true, all those emails are there" – his best explanation was "he forgot" – I don't think you should believe that explanation. Example number 4 – and I have to say, I have been doing this practice for many decades, and I

have never seen such an example of a witness misleading an Arbitrator on a crucial piece of evidence – this is a transcript of Dr. Rancourt’s remarks at Queen’s University, and then a radio interview after. It is a document that is highly prejudicial to Dr. Rancourt, because it puts the lie to all of the events that lead to the A+’s and his termination. Dr. Rancourt, as you recall was very discomforted when the document was put in front of him – he did admit those were his words – his evidence was between 20 minutes and 30 minutes, maligning the student who had taken the transcript, and suggesting that perhaps the transcript wasn’t complete, hoping that perhaps you would put less weight on it. After that evidence I put to him “well, you made a personal audio recording of your remarks, did you not” – he denied it. And then he started prevaricating, because he probably figured out that we had evidence that he did so. And I showed in exhibit 151, and his own words at page 9 of that document, and I’ll read them, “and my own personal voice recording of my talk and conversations”. This is a document written in January 2010, not long before this proceeding began, and it tells you that this gentleman had a personal voice recording of highly prejudicial comments that would contradict his key evidence in this proceeding. There are one of two possibilities; he deleted it – and I can’t help but note the rich irony of that possibility given his frequent Access to Information requests, and the documents not given by the University, and the injustices; or this gentleman still has this recording on his hard-drive and he won’t produce it. His response? “Oh, well the University has a recording and it didn’t produce it” – trying to distract – and it’s true, the University did have it’s own recording, that’s referenced in documents, but that’s beside the point – he made his own recording, he doesn’t want you to hear it. So you have to reflect to yourself as you’re writing your award, if this gentleman would lie on such a critical piece of evidence, how can I believe the rest of his evidence? And it’s interesting in that light that Michel Picher in his award, exhibit 157, at page 63, alluded to his own difficulties with Professor Rancourt’s credibility. And I’ll read it to you, but I’ll also give you the quotes in my written material – in his inimitable writing style, Mr. Picher says “while Mr. Rancourt is obviously possessed of a fine and discerning mind, these ... are not nuances.. the grievor’s failure to acknowledge that he was wrong ... is a cause for concern .. responsibly disregard” – now that’s oblique, but you can read the message of Michel Picher in the words.

So those are the four examples on credibility. I want to now turn to grievance G-14, which is the first one you were asked to deal with. The letter of warning itself is exhibit 13, and it relates to this course SCI1101/1501 taught in the fall of 2006, and the course description is set out in the letter of warning, exhibit 13. And the gist of the discipline was, Dean Lalonde concluded that Dr. Rancourt was not delivering the course content that was described in the course description. Dean Lalonde in his evidence referred to reviewing a website that had been maintained by students – it’s referenced in exhibit 23 – and he testified that it talked a whole lot about activism, but next to know discussion of science in society, which was the subject of the course. And in re-examination, Dean Lalonde said that part of his concerns emanated from the fact that Dr. Rancourt published material on his practice of what he called “academic squatting” – and you recall Dr. Rancourt rather proudly said that he’d come up with the concept of squatting

– so Dean Lalonde said “look, the gentleman published on this subject, I had to conclude that this is what he did in this course – he was assigned a course and he delivered another course”. Dean Lalonde’s words “I had all reasons to believe that he really believed in this concept – I had no reason to make it up. I thought he would not deliver this course” – but what is most revealing in terms of what the truth is in this episode – it’s a constant theme in this case – Dr. Rancourt’s own words that I’ll point you to – exhibit 16 – that’s a document, we don’t need to go to it, that was distributed by Dr. Rancourt the summer before the course was offered – and if you look at it, I think the word “science” is offered once. And he said “no, that’s not what I delivered”, because he knew that it would have been a classic piece of evidence that he squatted the course. Then I referred him to Dean Lalonde’s letter, exhibit 15, where he expresses his concern about this document that Dr. Rancourt distributed, exhibit 16 – Dean Lalonde’s letter says “look, exhibit 16 has been brought to my attention, doesn’t seem to be what I consider to be science and society” and Dr. Rancourt responds in an email, exhibit 17, in his own words, he says “yes, it relates to the Science and Society course – that document relates to the Science and Society course” – so in his own words he says, “yes, that’s what I taught” – and I asked Dr. Rancourt about exhibit 17, and you can draw your own conclusions about what you saw in the witness box, but I saw him being very embarrassed, and his response was very clear, he said “I was frustrated, I made an error” and later, “I got carried away in my head” – now this is translation – later he said “it was immature”, “it was gauche” – he attributed it to “lack of experience” – now this is a gentleman with 23 years experience – “a little awkward” – if you’ve ever seen evidence in the terminology, the verbiage of a witness, that was it – I mean, the examples are many. And I said “if you conclude that exhibit 16 was an accurate description of the course that was delivered”, and Dr. Rancourt, in exhibit 17, says it was, then you have to conclude, to use Dr. Rancourt’s terminology, that he squatted the course.

And on the subject of squatting, exhibit 135 is an article written by Dr. Rancourt where he talks ostentatiously and with great bravado about his practice of squatting, and he referred to a 2005 course and I’ll quote “the first example of overt academic squatting... does with it something different” – so, in fairness that was about students in a 2005 course, but he now has to say to you “oh, that was not what I did in this course” notwithstanding what he wrote. So our submission is that that warning should be issued for cause.

I’ll turn to the second warning, exhibit 40, grievance G-15. The warning letter is exhibit 32. Dean Lalonde points out to Dr. Rancourt that the average mark in this particular class over the five previous years ranged between 4.8 and 5.2. And then in the year in question, it rocketed up to 9. Dean Lalonde conveniently gave us a graph depicting that, and that’s exhibit 35. Notable given what comes later, in the warning letter, Dean Lalonde reminds him “your duty as a professor is to give an objective evaluation of students in support of your grades” and he adds, “if you don’t do that you’ll be disciplined further up to and including dismissal”. But once again, Dr. Rancourt attempts to convince you that this incredible escalation in the grades of the students was an objective evaluation, and remarkably, these students performed at that higher level. And

how did that occur? He gave two principal explanations – a change in his pedagogy, and that it was a smaller class. The evidence suggested 45 students, exhibit 119, which is the list of classes that Dr. Rancourt prepared that he taught says 50 students, so I'm not sure, but it's in the range of 45-50 students. So, he gave extensive evidence of the pedagogy that he applied that gave those results – one of the pieces of evidence he gave was, "it's the progress of the students through the course vs. evaluation at the end" then he says, "while the conventional method does not consider the state of the students at the beginning of the course" – "considering these two methods are the opposite from each other, one is student-centred, the other external motivations" – and he goes on, and on, and on, -- and I ask him, how does this relate to your responsibility to teach the material in the course. His response was interesting, he said "the question is not correct" – he didn't want to answer it, and you directed him to answer it, and I recommend you to read his response, and once again, it's translation, but this is what we thought his response was "if the average in a course was 60% does that mean the professor failed his responsibility? No, that would be absurd" – "the professor has a responsibility to optimize learning using the best method he can find as a professor" – if you can make sense of the whole of that evidence, I would be impressed, but I suggest to you that Dr. Rancourt's discomfort with that question was that his pedagogy does not involve students learning a curriculum -- quite frankly, I'm not sure what it involves, but one thing you can conclude is that it does not involve grading students in an objective manner, in the manner foreseen in the collective agreement. There are different parts of the evidence that point to that conclusion exhibit 46 shows marks of a different professor delivering the very same course in the English language, and they're regular marks, not out of keeping with historical marks, not out of keeping with Dr. Rancourt's marks in other years. And if you take yourself back to that school year – one set of students signs up for the French course, on for the English course – this game that Professor Rancourt is playing has real world consequences – it prejudices students' academic careers – the students who had the misfortune to sign up for the English language course would have received a lesser mark – if they're competing for graduate schools – and Dr. Rancourt tried to pooh-pooh all that saying those things don't apply for physics students – a rather novel concept – I say they do matter, and if you think that those students could have lost out to other students in Dr. Rancourt's classes. Now, G-15 is not involving a set of facts where Dr. Rancourt gave everybody an A+, so there's a bit of a gray zone to work with, so when you reflect on whether or not this was for cause, that will obviously be a factor, but I suggest to you that you won't have any difficulty concluding that the warning was for just cause because once again we have Dr. Rancourt's own words to rely upon. We know the course was given in the winter of 2007, that's shown by exhibit 119 – we know that Dr. Rancourt gives a talk at Queen's University in October 2007. Exhibit 136 is the transcript, it would be great if we had an audio, we don't though, but we have a transcript, Dr. Rancourt says "yes, I said those words" – he doesn't take issue with the fact that he said those words. At page ### he refers to a 2005 course and says "I have not graded since – in any of my physics courses or in any other course" – this is October 2007, he's just delivered this course in the winter 2007 and he's saying "I haven't graded a physics course since". It's not very difficult to conclude that Dr. Rancourt is not telling the truth when he says "oh those grades, now I know they're remarkably

inflated compared to previous years, remarkably different than the English course of the same year, but it's because of my pedagogy" – it's not hard to believe that's not credible evidence, because Dr. Rancourt contradicts that evidence himself. And I'm not going to go through it in detail, I just commend you to exhibit 60 – that document is a lengthy transcript between Dean Lalonde and Dr. Rancourt about this subject. I would ask you to read through that and see how Dean Lalonde was so frustrated by Dr. Rancourt's prevarications, refusals to give him a direct answer, he took him here and there and claimed that he wasn't on the correct section of the collective agreement, and on, and on, and never gave him any explanation. I just think it's insightful because it shows Dean Lalonde's efforts to understand what Dr. Rancourt was up to, and he was totally frustrated. I'd ask you to keep that in mind when you read the evidence where Dr. Rancourt says "I just wanted to meet with Dean Lalonde and explain things" – that's nonsense with exhibit ## you'll see how much explanation Dr. Rancourt wanted to give to his dean: none.

Now, I'll return to the dismissal – dismissal letter, exhibit 78. I'll just identify the key documents. The detailed grounds for dismissal are set out in exhibit 41, the dean's letter to the BoG. The grievance is E-24 and I don't have the exhibit number but it will be in the written document. So the principal ground for dismissal is that Dean Lalonde gave a direction to Dr. Rancourt that he not grant an A+ to the students in the classes 4385/5100 regardless of their academic performance. And the University's position is that Dr. Rancourt disregarded that direction and did exactly that. The Dean posed a number of questions to Dr. Rancourt which were not responded to, but of course we've had days and days of evidence to hear Dr. Rancourt's explanation of his conduct. The only significance of the questions is that they disclose the nature of Dean Lalonde's concerns. Now page 4 of the exhibit refers to Dr. Rancourt reading Dean Lalonde's letter to the class. That's the 2<sup>nd</sup> component – there's the direction not to give A+, and there's the reading of the letter to the class. I just want to clarify the University's position – there's a reference in this letter to Student Z: that conduct is not relied upon in this proceeding. There's also reference to Dr. Rancourt's refusal to supply examination papers, and as noted earlier, that's not relied upon. So as you're going through the letter I just want you to understand that you can disregard those elements of the recommendation for dismissal.

Turning to the grounds for dismissal, I think it's significant to note some chronology. The last disciplinary warning was November 2, 2007, it's exhibit 32 – Dean Lalonde says, "you must evaluate students objectively". Exhibit 119 summarizes the courses delivered by Dr. Rancourt. It might be useful to go to exhibit 119 because the chronology is somewhat important. So, the disciplinary warning about not evaluating students objectively is PHY1722, winter of 2007 – that's where he increased the marks to roughly 9. The warning is issued in the fall of 2007, and so there's three courses delivered by Dr. Rancourt where he graded students after receiving that warning. You'll see them listed: fall of 2007, five students in PHY5130: Characterization Methods all received an A+; and look at the second course he taught in the winter of 2008, after the Dean's warning in PHY4770, all twenty-one students received an A+;



and then the course that's the subject of the dismissal, also in the winter of 2008, students in PHY4385/5100: Solid State Physics, all received an A+.

So, Dr. Rancourt was put on notice "you must grade students in an objective fashion or you'll be disciplined further and possibly dismissed", and what does he do? He gives every one of his students A+. You could readily conclude that he was mocking his dean, he was mocking his Employer, and he was basically saying "come and get me". He knew very well the consequence of what he set about to do.

So how did things unfold? Dean Lalonde hears from two students – at least two students, as per the evidence in this case – from the 4385/5100 course, citing concerns that they had about the course. You heard the evidence of those two students, so you had firsthand their recollection of what had occurred. I think we called them X and Y but I'll refer to the one as V, in commenting about his evidence. He testified, "Professor Rancourt had gone through what was done in previous classes and discussed what we wanted to do in this class – at some point professor said everyone would get an A+... he was very clear on that point, it was a contract between us and him, and there's nothing the University could do about that" – interesting, when we get to him reading the Dean's letter to the class, he said the same thing: "nothing the University could do about that". But that's a young man, you heard what his marks were in physics, clearly an astute mind, and that's what he said. He was asked, do you remember the exact words? And he said "paraphrasing, we would all get an A+ and it was a contract between him and us, and there was nothing the University could do about that" – and it was suggested to him that perhaps Dr. Rancourt said "I suggest that with my method you will all excel and get the maximum mark" and the student said "I don't think that happened, I recall A+ being used". And a little later, it's put to him "Didn't he say each of you will excel and each of you will get a maximum grade of A+" – the student responds, and this is very telling "what was said was far more direct than what you are suggesting".

The second student gave a written report of what Dr. Rancourt said, at exhibit 2. You'll see his words there: "Dr. Rancourt told us directly that everyone would be getting an A+. By removing grades, less stress on us to learn". In his evidence in chief, he said "Dr. Rancourt came in and introduced himself, said he was going to try a different teaching style and we would all get an A+, the University couldn't prevent him, in order to get an A+ you just had to show up and participate in discussion" – and he was pressed on this in cross, the question was "I'm not sure if it was excel" and he said "don't remember the exact wording, but what I took out of it was that he was promising us an A+". Now you'll hear in the submissions in reply that "ah, but the evidence was the students had to come to class, participate, do a midterm, maybe write an exam, although they didn't have to" and they'll point to Dr. Rancourt saying over and over "I did not guarantee an A+ -- I graded each of those students objectively and they earned an A+". Isn't it remarkable that he lead those students to believe, in the first class, they would all get an A+ and every last one of them did so, along with the students in the other courses he was teaching? But he will ask you, through his counsel, to believe that once again, it was a miracle of Dr.

Rancourt's pedagogy that these students performed at this highest level. But apart from what would be your extreme difficulty with the credibility of that evidence, once again we have Dr. Rancourt's words – we go back to the talk at Queen's University – now this is before giving the marks in Solid State Physics, he's saying "this is what I do, this is my approach to grading" – page 6, exhibit 136 – these are his words "yeah I refuse to grade, you're all going to get an A+" – I must say it is very rare that a grievor's own words so categorically refute his statements under oath – it's remarkable how far his statements are from day-to-day reality, that he thinks he can convince you that he's telling the truth. This will show (( )), he says "you can walk right out of here". As you have the task of reading through his extensive evidence about his pedagogy, I'd suggest that those words are going to echo in your mind – why is he saying in October 2007 that "this is my practice – you can walk right out".

M: I don't often interject...

H: Oh sure, it must be for good reasons.

M: We agreed that the content was not affirmed in this document. You've come back to it a number of times and I'm starting to get worried that the University is placing reliance on it beyond our agreement. You were not to take any notice about the content of that transcript unless it was identified and unless Dr. Rancourt recognized it. I'm not asking for a ruling, but we have to be very conscious. Professor Rancourt has denied some of the things that are in that so-called transcript.

H: I appreciate you raising the issue now because I can respond to it – it's true we rely on it extensively – I asked Dr. Rancourt on several occasions "is there anything in this document, any words you did not say?" My recollection is that he at no time said it was inaccurate. He said "I used those words" but then gave a further explanation, which was that there might have been some additional context. But we'll leave to the Arbitrator to review his notes. I think it was clear that the grievor took no issue that exhibit 136 was an accurate transcription of the words he used.

M: I think the issue was because he said "I would never have used the words 'you can walk right out of here'"

A: I will consider your remarks when I review the evidence.

H: Just on that last point – if that's what you see when you review the evidence, I ask you to not believe it. And think about how unlikely that would be that it was recorded in the document and echoes what was said earlier in the document where Dr. Rancourt conceded he did use those words.

Now, in terms of assessing Dr. Rancourt's credibility on this critical point, I'll just touch on the exams, particularly exhibit 146, where a student submitted a final exam response which

would be amusing if the subject matter wasn't so serious. This young man, in a 4<sup>th</sup> year physics course, submits a final exam and says "I had this interest in glass, and so I did a Google search and what came back was that glass was referenced more frequently than Britney Spears and Albert Einstein". He later apologizes because he says "I planned to do an experiment in breaking glasses, and I was gonna use beer bottles, I didn't have enough time to do it, and I'm sorry about that." You'll remember Mr. Marchand was asked about what grade would you give such an exam, and I must say I felt sorry for him having to comment on it, he said "well, I don't know what else the student told Dr. Rancourt, but I can't say I'd give more than an average grade to that exam" – you can review this, but I think you'll conclude that Mr. Marchand was being generous to his friend, Dr. Rancourt.

Now, Dr. Rancourt said in his evidence "oh, yes I remember this student and we had conversations which showed, notwithstanding his exam at the end of the year in which he demonstrated his knowledge by talking about Britney Spears and breaking beer bottles, but that he demonstrated excellent knowledge of solid state physics throughout the course" – one his drawn to amusement but in fact it is truly sad – truly sad when this professor attempts to sell you on this nonsense under oath, after affirming he'd tell you the truth.

Now let's look at another exam – one and a half pages, it was a take home exam. This was the student who Dr. Rancourt said was playing cards or something, and had to talk to him – there was an oral exam with this young man – put Dr. Rancourt affirmed that he discerned that this student merited an A+ -- take home exam, one and a half pages. We heard that student testify – you can readily conclude that he took Dr. Rancourt at his word: he was getting an A+, so why would he write extensively when he knew that he had his mark in the bag?

It might be an opportunity to take a morning break.

A:               Ok, we'll take 15 minutes.

*(Morning break at 10:53 a.m.)*

*(Resume at 11:10)*

H:               It's unfair to see a student who had not done the exercise get the same mark as one who had not done the effort. He said "Put yourself in the place of a student who had worked hard and was not admitted, and a student who was in Dr. Rancourt's course and was admitted to graduate school". Those are Dean Lalonde's words in terms of eloquently stating the impact of what Dr. Rancourt was doing to students at the University of Ottawa. Clearly he had a personal agenda, clearly he sought notoriety both in the University and in the wider community. You can tell from his writings that he relished the attention he was getting for this behaviour, but what he seems to forget, or seems to have forgotten – and there's not sign that he cares, to this day – is the impact of his agenda on young men and women, both in his course and in other courses. I also asked Dean Lalonde to comment on the impact of what Dr. Rancourt was doing to the

University, and he said, “you don’t have to grant A+’s to everybody for very long before it starts getting known and other universities start characterizing your University as “Mickey Mouse” – news travels very quickly among the physics community”. Dr. Rancourt’s actions made a mockery of his dean, his Employer, and his students. All because he wanted to draw attention to what he calls his “pedagogy”. He commented that he was a “provocateur”, or he liked to provoke. It’s quite evident that that desire overwhelmed any respect of caring for his students, his Employer, his dean. This isn’t a case where I think the case law is all that helpful to you, but there is an interesting case out of the U.S., it involves the University of Illinois at Urbana-Champaign – that’s the case reference, the professor was Professor Wozniak – the court dealing with this action begins their ruling with this statement, “After 28 years of teaching, Professor Louis Wozniak became a rebel” – kind of an interesting comment in the context of this case – the content of Professor Wozniak’s actions isn’t clearly stated, but it involved grading and refusal to hand in of grades. But at the conclusion, the court says these words, “No teacher has a fundamental right to hand in random or skewed grades, or to pretend that 95% of his students are better or worse than average” – interesting, in this case it was 100% of students, but these were their facts – “both the University and its students have powerful interests in... for grades are the University’s stock and trade, and class rank may be... to a student’s future... accurately reflect their achievements”. Put it in terms of taking away that student’s right to receive a grade that accurately reflects their achievement. One final comment from the Wozniak case, “Universities assure themselves... otherwise their credentials are meaningless” – and that’s what Dean Lalonde was referring to when he said “Mickey Mouse” – the credentials of the University of Ottawa would become meaningless given Dr. Rancourt’s grading.

Now, looking at exhibit 41, page 4 – that’s Dean Lalonde’s letter where he references reading the letter. I just want to position you in terms of what the allegation is. It’s at paragraph 4, in brackets. The other key exhibit is exhibit 10, which is where the student reports what had occurred the day before in Dr. Rancourt’s class. It’s worth going, I think to exhibit 10 to see the student’s words. And, you’ll see in the 2<sup>nd</sup> paragraph that Dr. Rancourt told the students, and these are the student’s words, that “a minority of the students in our class were unhappy with the teaching methods.... you threatened him about his grading methods.. he told us how all the threats you made in your letter were ridiculous... it would go to court.. he would expect an apology for being libelled in front of the faculty” – skip to the next paragraph, it says “one student then asked ‘it seems like you’re trying to turn us against the University....’” it the student replied, and he said he put quotes on it because it was important, “if in the half-hour that’s left in class I can turn you against the University, then it would be worth it”. Now Dr. Rancourt said he did not say this, and this forces you to conclude that the student somehow made up that material.

I invite you to read the cross-examination of the student, and there wasn’t a challenge to the reference of putting this statement in quotes. In fairness, Dr. Rancourt in his testimony said, “No, not accurate” and virtually denied all of what the student reported. So it leaves you in the rather strange situation – you didn’t get an explanation from the grievor about why he would

engage in such behaviour, and if he did, it cries out for an explanation. Try to picture it, it's the last day of class, fourth year physics, a student suggests that they are supposed to be talking about super-conductivity, and Dr. Rancourt decides he'll read this email he received from Dean Lalonde, and then starts ridiculing his dean to the students.

It's one instance where, as I say, Dr. Rancourt just denied it, and what explanation can a professor give for such behaviour? I mean, it's a confidential email between him and his dean, very important subject matter, and I asked Dean Lalonde why this event caused him concern, and here's his response, he says, "in a way it was threatening for the students to be caught in such a battle" – and there's an individual who was sensitive to the interests of students, who thought about their situation, and he was troubled by the fact that Dr. Rancourt reading this letter was threatening to the students. He said "students feel that they become unwilling victims in this battle", he said "this really has nothing to do with their desire to learn Solid State Physics – they're there to learn physics and understand principles. Why should they be dragged into this battle that the professor was waging with his Employer?" and these words are interesting because I think they're very telling and troubling "the professor insinuates that he is in a position of power, and this can be a source of intimidation for students in class, who may not have necessarily agreed with methods used to teach the class, or who may not have agreed with many of the political or philosophical discussions he would hold in class". If we just reflect for a moment on the context, Dr. Rancourt was told by his dean "you have to grade objectively" – he knows he's engaged in this behaviour of giving everyone an A+ -- he knows there's going to be litigation, and he also knows that – and this is troubling – he knows that those students who complained could well be witnesses in a proceeding against him, and in fact that's what did occur. It's not hard to conclude that his first objective was to shut down any further complaints, and his second objective was to bully those students into second-guessing what they had done. He tells them, "Dean Lalonde's threats are ridiculous", "he's gonna go to court and he's gonna lose again" – he's going to beat him again – he's probably referring to Arbitrator Picher's award, which he thinks is a great victory, even though the disciplinary warning was upheld – he's saying to the students "those complaints you filed are not justified". It seems that Dr. Rancourt has one set of interests in his nature that are highly important – they're his interests. Trying to discern where he takes account, in a situation like this, of the interests of the students is truly difficult.

Now, this touches on another theme that I think is troubling, but take from it what you will. Dean Lalonde asks him, "does it not cause you any concern, what effect your actions have on these young people" – part of his response is, "well in my opinion I have no influence on youth", and he goes on to explain that. That is a truly troubling comment to come from a mature man who's taught students for 23 years, and comes in front of you and says he doesn't think he has an influence on youth. You can take arbitral notice of the reality that professors teaching young people at a university have a very significant influence on them in a myriad of ways. In this particular context, he's in a position of power, and he's attempting, in our submission, to use

that power to intimidate these young people, because he's worried about how they might undermine his interests.

I said I'd make very few references to cases – there are a few that I'll commend you to, but this one is the Southern Institute of Technology in Alberta. The interesting parallel is that the professor gave an A+ to 139 students, so intriguing in the factual similarities. Just bear with me a moment. I'll circle back to the quote and I'll provide it to you – the page reference I have here does not have it here.

What you'll derive from reviewing that decision is that the arbitrator was obviously not drawn to the instructor's explanation for attributing those grades, and upheld the dismissal of that employee. And of course, we're asking you to reach a similar conclusion here, and what was notable in the Southern Alberta case was that the instructor had even greater years of service than Dr. Rancourt, but that the dismissal was nevertheless upheld.

Now there's an additional decision by Arbitrator O'Shea at Laurentian University issued in 1988. There the grievor had 27 years of service. I won't go through the facts but it involved refusal to submit exams among a host of other things. Mr. O'Shea had these comments at paragraph 110 on page 44: he says, "I recognize that the grievor had almost 27 years of service with the University at the time of his termination. This fact has caused me to consider whether I should... consider a lesser penalty. However, after reviewing the grievor's conduct... failed to have any remedial effect.... abuse of my discretionary authority to modify the penalty imposed by the University". What he's alluding to is "look, this individual was disciplined" – using his terms the, "remedial ... had no effect" and "abuse of my authority". If we take that analysis to our case, we have a situation where this professor is given discipline involving the obligation to give objective evaluations to students, and not only does he not heed it, he goes the other direction and gives every student that he grades an A+ after receiving that letter.

Now, another consideration taken by arbitrators about whether or not to interfere with the decision taken by an Employer relates to whether or not they have an individual who had acknowledged their misconduct and on that basis there's some reason to think that the penalty of dismissal should be mitigated. And this factor comes up later on, in terms of the factors for not reinstating, but a grievor who refuses to admit wrongdoing gives the arbitrator the foundation to not reinstate. A decision of Pope and Talbot that's in your materials, and there's a quotation in the written materials, it says...

M:                Sorry, which paragraph?

H:                Sorry, I don't have the paragraph number. It's at pages 187 through 188. He says, "in considering whether the penalty was too severe...I note that the grievor... conduct was wrong". This is important. I note that arbitrators who refuse to acknowledge their conduct are poor candidates for readmission. Now, there's another paragraph, "a grievor who ... does not acknowledge his wrongdoing. An arbitrator must conclude, in these circumstances, that the

grievor will continue to .... exercise of his discretion”. Now that’s at paragraph 64 of the Pope and Talbot case.

In that vein, I submit to you that there’s absolutely nothing in what Dr. Rancourt said in his days of testimony that he isn’t prepared to continue with the same behaviour that lead to his dismissal. At no point did he reflect for a moment and say, “in hindsight, maybe I should have thought of the impact of my approach on students” – there wasn’t a hint of that in day after day of testimony, and it’s intriguing on that point to go to Michel Picher’s comments on the very same theme: at page 63 of his decision are the words “there appears to be no recognition, certainly no articulated admission on the part of Professor Rancourt that he did anything wrong... and no point ... expresses recognition that he was incorrect in describing PHY... as a bilingual course... own description ... a French language course. Nor is the arbitrator impressed... apparent indifference.... “the plan is... hope or intention in the back of his mind”. Very similar observations on Professor Rancourt’s evidence in that case that I’m asking you to make in this case.

So, on the basis of those submissions we ask that you uphold the dismissal, while as I said at the outset, I don’t think it likely that you’ll have to deal with this alternative argument, I’m going to address it now, and that is, if you find that there wasn’t just cause, that you’ll nevertheless withhold the remedy of reinstatement.

Now there are the six factors developed in the Hevelund(?) case. I’ll set them out, they’re by Professor Ramer(?). I find this comment helpful: at paragraph 58 in the 2012 decision of Brian Everton(?) at the University of Western Ontario, the arbitrator speaks to what he calls the Hevelund factors. I thought this was a useful summary of the factors. He said, “the Hevelund factors are in essence.. .future viability of employment relationship...any chance to repair the minimum level of trust to sustain that relationship”. Now, I’m gonna pack the factors together rather than go through them one by one: animosity towards management and coworkers...

A: Are you going back to the Hevelund case?

H: I’ll pick three factors and package them together. So, animosity towards management and coworkers; risk of a poisoned atmosphere in the workplace; and lack of trust between the grievor and the Employer.

Now, I’ll begin with, ironically, Dr. Rancourt’s own words in this proceeding. He filed a grievance, G-23, against a fellow professor, because he didn’t like what the professor was saying. The irony in that given his blog posts about other professors is just too rich to believe, but Professor Rancourt said “... includes protection against ... likely to practice dangerous behaviour” – that’s Dr. Rancourt saying “look, Employer, it’s your responsibility to give me a safe working environment and not allow employees to practice abusive behaviour”. Now, in that context, I tell you and submit to you that Dr. Rancourt is a bully. You will have seen in the evidence that he uses the internet, and in particular his blogs, to bully anyone that he takes a dislike to. You take

the members of the university administration who were involved in the decision to dismiss them, and they became the subject of his bullying behaviours. And I'll take you through them: the President of the University, Allan Rock, labelled a "douchebag", exhibit 124. In an extensive document – I suggested to Dr. Rancourt it took him a long time to develop but he said "no, no, it didn't take long" – he refers to him as being "ethically challenged, managing a cover up, director of a fraudulent internal report" – that's exhibit 125, but it's far more extensive than that. The University's not saying that there isn't an important right of free speech of all of its employees including professors – that's a vital right that should be preserved – but what is to be distinguished are the actions of an individual who is angry, that individuals in his Employer's administration have chosen to take him on, and systematically sets out to smear their reputations in a public forum. Now, if it was just these comments about President Rock, it might be said in response, "well where's the pattern, how can you prove that was his motivation?" Well, let me tell you, it's quite easy to prove. The Chairman of the BoG at the time Dr. Rancourt was dismissed was a gentleman named Marc Jolicoeur, a lawyer practising in Ottawa. Dr. Rancourt published an article on his blog with the title "Law Society acknowledges ethical breaches against Marc Jolicoeur" – that is a very powerful smear if the Law Society acknowledges that this lawyer has engaged in ethical breaches. I asked Dr. Rancourt, "are you saying that anything you've read acknowledges that they've made such a finding", and he said "no, no, there was no finding" – the question was "..." and the answer was "absolutely, I agree with you" (in French). Dr. Rancourt has never apologized, he never even acknowledged there was anything inappropriate in what he had done, and it remains on his blog.

Nathalie Des Rosiers was Vice-President of Governance of the University at the time. Her misfortune, it seems, is that she was involved in a meeting with Dr. Rancourt when he was given a recommendation for dismissal and that he was advised that he was to remain off campus. So clearly Ms. Des Rosiers becomes in Dr. Rancourt's sights, because he's not happy with her conduct. Subsequently, she takes a position as General Counsel at the Canadian Civil Liberties Association. Exhibit 127, which is copied to the BoG of the CCLA, goes through a host of allegations about her misconduct that I won't detail. He copies it to the media – he's just trying to smear her, in his typical fashion. And that's not enough, at exhibit 128, he posts a video, and the title is – this seems to be one of his favourite terms – titled "ethically challenged Nathalie Des Rosiers" – now, pardon my terminology, but he blathers on about how he didn't like Nathalie Des Rosiers being involved in his dismissal.

Now, I'll turn to another example of his bullying. In this case, this individual was not part of the decision to dismiss. Professor Joanne St. Lewis is a highly regarded Assistant Professor in the Faculty of Law at the University. She is a black woman. She was asked by President Rock to investigate allegations by the Student Appeal Centre of racism at the University. Professor St. Lewis issues a report in 2008, and it's evident that Dr. Rancourt didn't like the content of this report, because what he does in exhibit 129 is write another blog with the title "did professor Joanne St. Lewis act as Allan Rock's house negro?" He was twice asked by her lawyer to take it



down off the internet. He refused, and he's left it there to the present day. If you recall, he went on and on about defence of fair comment, and there's litigation and it will be resolved in litigation, but set aside legal principles – what a mean and vicious piece of work that posting was. And the idea that this individual would be put back to be a professor with this woman is just about impossible to contemplate.

I'll just take five minutes, please?

A:               Ok.

*(Break for five minutes, resume at 12:02 p.m.)*

H:       I apologize for the break. You will understand that Dean Lalonde testified in this proceeding – a wonderful gentleman, and unfortunately he's not beside me today. He was a member of the Mineralogical Association of ... and he was very proud of that. After he recommends Dr. Rancourt's dismissal, Dr. Rancourt decides to get his revenge – he sends to the listserve of the Association, including links to articles he had written exhibits 80, 81, and 82, containing vicious allegations he had made about Dean Lalonde. These were Dean Lalonde's comments about that action he said, "he was using access to a large group of my colleagues to attack me. It was a vicious attack, and to hurt my reputation". Now Dean Lalonde as a mineralogist – think about that – this man had dedicated his career to mineralogy and this was his largest association – Dr. Rancourt knew this and said to himself "that's how I'll exact my revenge". If that's not distasteful enough, exhibit ## contains a photograph. Now Dean Lalonde said "this was most my most prized photograph" – and he gave a copy of it to Dr. Rancourt as a present. Now Dr. Rancourt wrote an article and said "look, I'm taking that prized photo of yours, and here it is on the Internet". Now to return to Dean Lalonde's words – "why would this photo from one friend to another appear on a blog? I was very hurt by this and consider this one of the many occasions that Denis Rancourt took vengeance on me". I asked Dr. Rancourt "look, in light of Dean Lalonde's death, did you think of his family, his friends, his children, did you think of taking this down" and his answer was "there might be some comments on the article and it will lose the thread of its meaning" – I'll leave you to make your own assessment of that.

It's interesting to go back to exhibit 123 – Dr. Rancourt's criticism of a fellow professor and he says, "... went beyond the bounds of.. and went into intimidation... ." He's complaining – this incredible in light of what I just told you – he's saying, "his comments cross the boundary into... personal threats". He readily complains about such behaviour – I agree with him there – but he doesn't agree that all of those concerns apply to his own behaviour.

So that is the evidence I say falls into those three factors: animosity towards fellow employees and coworkers – incredible evidence of that; poisoned atmosphere – referring to a fellow black professor as a "house negro"; *(last factor)* – how can an arbitrator reinstate this individual?

Arbitrator David Starkman in case of Peterborough health centre was faced with this issue regarding reinstatement. Page 17, paragraph 122: “the grievor’s behaviour was entirely inappropriate and demonstrated extenuating.... not be returned to the workplace. ... . Grievor’s actions direct challenge ... destabilization of an entire department... grievor was in position of authority... used that to harass them.. no suggestion she understood seriousness of her bullying and intimidation” – that comment can be applied equally here – “... “ --- and then this key statement “no expectation that ... best interest of workplace that grievor not be reinstated”.

And one further case reference *re Alberta* and... I’ll give you a moment to find paragraph 29 of that case.

A: It’s at paragraph 29?

D: Page 31.

M: I have it at page 333. That’s the version that I have.

H: Oh, we gave you a special version.

M: I appreciate that.

H: Somewhat interesting are the factual similarities involved in the grievor’s conduct of posting on blogs. The arbitrator says, “... once the blogs were discovered by supervisors and coworkers, the damage was done” – it then says – “she refers to ... lunatic asylum... she wrote in mean-spirited and insulting terms” – then a few paragraphs down – “perhaps with heartfelt apologies, the employment relationship could have been restored” – and I thought that was worth noting – if there had been some hint of apology, you might have in that circumstance considered reinstatement, but there was nothing – the grievor has posted all this material on the Internet and will not take it down.

Now in terms of the Hevelund factors, there are two others: refusal of grievor to accept any wrongdoing, and I touched on that in terms of your dismissing the grievor in the first place. The other is demeanour and attitude at the hearing. Over days of hearings, Dr. Rancourt steadfastly refused to acknowledge any wrongdoing. He defended giving A+ to all of his students, he dismissed that there was any cause for concern that the practice might harm those students or the University, he saw no cause for concern about reading Dean Lalonde’s letter to his students, in fact he denied even doing so, and I’d ask you to agree with this characterization of his evidence: he gave his evidence in a disdainful fashion – disdain for the University, disdain for the administration of the University. His view was that he was right on each and every issue, and in his crafted personal narrative, he’s the victim. Dr. Rancourt is an egotist, and he’s a blowhard, and I invite you to read exhibit 136, his remarks to Queen’s University, which I claim, it has been accepted that he did not say he did not state these words – in the unlikely event that

you decide there was not just cause and decide whether or not to reinstate this gentleman, I ask that you take into account what I have just said and decide not to reinstate this gentleman.

Now, there's going to be an allegation of bad faith. I'll wait until I hear how that is framed before I reply to that. So that concludes the submissions of the University and we ask that you uphold the dismissal, and in the alternative, that you decide not to reinstate.

A: Ok, so we'll adjourn.

M: I would request that we adjourn until 2:30 since we have such a large amount of material to go through.

*(Break at 12:20 p.m.)*

*(Continue at 2:31 p.m.)*

M: We are going to invite you to find that the University did not have cause to discipline Professor Rancourt for his activities that are the subject of these three grievances. We similarly, and for that reason, I would like to say, you do not have to go to this question of reinstatement, because if there is no cause for discipline, you don't get to step two. And, as you imagine, we don't agree with the Employer that it would be inappropriate, in these circumstances, to put Professor Rancourt back to work.

Back at the very beginning of this, it seems like a very long time ago, I remember the University saying "this really isn't a case about academic freedom". We took the position that in fact it was, and we are going to suggest to you that the notions of academic freedom and the difference that that makes to the university environment are absolutely critical to this case. If, in a shop floor case, an employee came and said, "well, I've come up with this new means of producing a widget, and so I've started using that means of producing a widget", everybody would look at him and say "what are you talking about – you produce widgets using our way" – "this is not a place for innovation – come and talk to us, and if we agree, then you can innovate". We suggest to you that you must change your point of reference when you look at a university situation. We're going to suggest to you that the relationship that we're discussing here is not like the typical employment relationship – that the relationship is unique, and that academic freedom is what informs that unique relationship. And I haven't even the smallest doubt that the university will be in complete and absolute agreement with that. And you may say, "well, how can you be so sure?" – well, what I'd ask you to do is to go into cases and jurisprudence, and to look – we've divided that up into a folder called "academic freedom" – and you'll see that we've provided full copies of all the copies, and provided extracts. So we'd ask you to go to into the folder called "cases and jurisprudence" and a word file called "extracts", and please go to the bottom of page 1.

The Association is asking you to find the following: “the employee-Employer relationship is unique, because the philosophical principle of academic freedom has individual aspects... time honoured practices within University... promote academic freedom of professors” – and I think when the University of Ottawa wrote those words, they were absolutely right. That’s an extract from representations they made in a case before the Information and Privacy Commissioner regarding Dr. Rancourt’s request for documents. They are saying this about the university environment as relates to Professor Rancourt, and they’re right. You will see the principles relied on by the University in their submission at pages 40-49 in the collective agreement, but the Academic Freedom article is Article 9. And it provides that freedom to professors, as we’ll see in some of the other cases, because it is crucial in the university environment, not just not to squash, but to encourage vigorous, pointed, difficult debate. You will see the cases talk about the obligation and right to criticize ideas and politics, the administration of the university, and the university itself. That concept is very well developed in Canada in the courts and before administrative tribunals, including labour relations boards and arbitration awards – it is not a concept that is developed in the same way or to the same extent in the U.S. jurisprudence.

We intend to suggest to you, and we hope that you will agree with us, that Professor Rancourt, when he says, “I was pursuing an area of academic study and applying it in my class” that he must be believed in saying that. We’ll speak for a moment about the four pillars of the University’s suggestion that Dr. Rancourt is a liar. But it’s very telling, who we haven’t heard from in this hearing. Professor Rancourt did something that you don’t like witnesses to do if you’re counsel. He said things like, “this is not controversial”, “there’s no disagreement amongst academics about this” – he said things like this about the traditional approach to teaching science, and in particular, physics. “Just is not working”, “people are learning to get grades, and not understanding the basic concepts”. He spoke about a large area of research – Physics Education Research – that says traditional methods of teaching physics to students are failing the students – and I mean that in the sense of doing them a disservice. Students are getting marks, sometimes good marks, and not understanding basic concepts. They’re going on to graduate courses, and the generally accepted state of affairs is they’re getting to graduate studies and professors are having to test them on basic concepts and finding they don’t understand them. Professor Rancourt was asked this by myself, he was also asked this on a number of occasions by my friend, and what he said was, “this is not Professor Rancourt’s little pet theory about the way the world works, this is a generally understood set of principles”. Professor Rancourt arrived, on the first day of his evidence, with a box full of what he said was the pedagogical background to what he was talking about, and he cited additional documents – he talked about conferences, and presentations, and studies – but he made it clear that he was not equivocating, he was not saying that it would be a good idea to do this, he was saying “talk to anybody who works in this area, and he’ll tell you this”. He said that, while representatives of the University of Ottawa sat opposite, and the question that I asked, rhetorically, is “what did you think of the experts” – I don’t mean that in the sense of an expert witness – I said, “what did you think about the faculty

members who said ‘well, that’s one way of thinking, but there’s a whole other area of study that says this is working very well, thank you’”?

Dean Lalonde, when I asked him that, deferred and said “well, you’d have to talk to somebody who’s an expert in physics” – rightly so given his background. But there hasn’t been a single person who’s testified to refute his testimony that this was an accepted method of pedagogy that he put into his class. I’m going to get into exactly what that pedagogical method was at a later time, but I’m going to suggest to you that, in this decision, one of the elements that has not been seriously challenged – if it was challenged at all – was the series of statements Professor Rancourt made about traditional methods of learning physics and the studies into better ways of doing so.

The University clearly – Dean Lalonde in particular – didn’t accept that that was a legitimate view, let alone something you could put into practice, and we heard at the beginning that the University was reserving the right to say that Dr. Rancourt was experimenting on the students. That’s consistent with the view that he was plucking things out of the air and engaging in his own diabolical efforts to foist them on unsuspecting students. Nothing could be further from the truth – there is no evidence that supports that theory.

Continuing with the background, we are dealing here, really, with four questions: the first one is whether or not, in SCI1101, Professor Rancourt followed the course description, when he mixed elements in that class that went to science, and elements that went to society. The second is whether, in PHY1722, he evaluated objectively when he gave students marks ranging from C’s to A’s. Question three: did Professor Rancourt evaluate objectively when he said, in his upper level physics course, fourth year and graduate level, even going up to people who were in the doctorate program in physics, that they should all get A+’s? And then the fourth question, that the University is proposing as a fourth question, which is: even if he didn’t do anything wrong, they’re asking that you fire him anyway.

It may play into the University’s arguments to say this, but what is clear is that the University of Ottawa doesn’t want Professor Rancourt back. I’ve sometimes been called the master of understatement. But that’s not enough. We have to look at what the University says is the reason why you shouldn’t believe him – and they say that. So, there were four key examples of why you shouldn’t believe Professor Rancourt, according to the University. Number one deals with the evidence of the student who testified that Professor Rancourt read a letter, exhibit 48, to his students in the last class of the year. You were told, according to the University, “Dr. Rancourt, in his cross-examination, said it didn’t happen”. I’m going to ask you to look at your notes very carefully, and unless I’m mistaken, what you’ll find is this: Professor Rancourt didn’t disagree that he spoke about the letter, what he said was that it didn’t make sense that it would be the last day of class, because that’s normally taken up with reviewing what’s been learned, and I believe he said – and I can’t be sure of this – “some social side” to the last day of class. But he

said he did not agree that he read the letter. So as far as saying this event didn't happen, he took issue with some of the details. My recollection was that he said he believed the students have a right to know some of this, because it affected them. You're told, based on the University's version of Dr. Rancourt's testimony, that this was a blatant attempt to mislead. When you review your notes, I believe you will find that exactly the opposite is true: Professor Rancourt was not categorical – he relayed what his memory was of the events, he accepted certain portions of what was said, but said, based on his memory, that certain others didn't make sense to him. That's number one.

Pillar number two of the University's argument that Professor Rancourt is not to be believed: the Gmail account. In 2012, when we began this odyssey before us, the University announced that it was linking this case to a variety of other, what we say, are peripheral issues, related to some concerns about violence and put Professor Rancourt on notice for the first time that it considered that to be relevant to the issues before you. Until that time, Professor Rancourt as he said – he doesn't save thousands of emails – as he finishes with them, he deletes them. He said he saves some, but it's not a large number. You were told during the University's argument that Professor Rancourt said that he vaguely remembered his email account. I can find no reference to Professor Rancourt using any words even remotely like that. You were told that Professor Rancourt said that he just used it to invite students to a social evening. The University put this forward on several occasions, so it's difficult to focus on one incidence of cross-examination – but we will suggest to you that he said, cumulatively, the following: "I tried, when it was University of Ottawa business – that is, things with the administration, interactions with students, grading, and the like – I tried to do it on the University of Ottawa account, and things that weren't about that, I tried to do it on the Gmail account". So I think that what you were being asked to conclude was that Professor Rancourt lied about the Gmail account. Now, we did have the advantage of – and I'll talk about this a bit later – of a student who is meticulous about saving everything, and cataloguing it and organizing it. We came up with about, I think Mr. Harnden was right, something between fourteen and seventeen hundred emails. As he said, many of them were as a result of both Professor Rancourt and Mr. Marchand being on the same email groups or Google groups or mail servers. So, to say that Professor Rancourt is somehow lying about the existence of emails to students on his email account – that is, that he has those emails, is absolute conjecture. I'm not aware of any efforts that have been made to obtain the records from Google, who runs Gmail, I would assume that those records don't exist, but if they don't exist then they don't exist.

Number three: Claude Haridge. My friend is right – Professor Rancourt made an error when he said, at first, "I don't think I knew at the time that the trial was about burying ammunition in the woods, I thought that it was in his house". He was shown a document that he produced, an email that he produced, and he says, "no you're quite right, I was mistaken, at the time I was aware of that". That doesn't have any of the earmarks of somebody who is trying to be deceptive or equivocate – he accepted quickly, completely, and accurately, that he had been in

error about what he had known at the time. What's very interesting though is that he was asked – he was told, by the University, “We take the position this is relevant, so go and look at your Gmail account and produce anything you have related to the issue” Professor Rancourt didn't sit in front of anyone – the only guide that he had, as he went through his Gmail account, was his conscience. And in spite of that, he produced – I can't remember the exact number, but let's say as an estimate, 10 emails from that period, including the email that my friend referred to. The University's view is, “well, he appeared to be embarrassed when he read that” – I think that's an absolutely accurate assessment – you show somebody something they wrote earlier and they say “you're right I didn't know that”. His best explanation, as you heard, was that he forgot – we submit that that's entirely believable in the situation we have just described.

Pillar number four. Professor Rancourt goes to Queen's University, and he gives a talk, and the University arranges to get a recording, ultimately it's reduced to digital format, but we don't know the original format – the person that the University has hired to collect information on Professor Rancourt – a student who was working as a reporter for the university newspaper, provides a copy of that to the Dean. The Dean confirms that there is another copy in the possession of the General Legal Counsel for the University. Further emails tell us that a copy is also in the possession of, I believe it was the Vice-Rector. And both parties had an obligation to produce things – first of all not to destroy things that they knew were significant – and there was a joint undertaking to produce everything to the other side. Three copies in the possession of three of the more senior people connected with this case, in positions of extreme responsibility at the University, have had their copies gone missing. The University doesn't apologize for that – it's just one of those things: three copies in the hands of the Dean of the Faculty of Science, Principal Legal Counsel to the University, and the Vice-Rector just can't be found. But what you're being asked to find is that, because Professor Rancourt hasn't been able to furnish a copy, he should be seen to be completely unbelievable – prevaricating is I think the expression that was used – it is as good an example as any of the double standard that appears to apply when analyzing the behaviour of the University and the behaviour of Professor Rancourt.

I'd like now to turn to what I will call the Letter of Termination. Exhibit 41A. If we can look at page 5 of 6, the termination is based on five categories of alleged misconduct. Number one – and maybe I'll – I won't assign a number to this, because it won't make sense later. So, there's the allegation that Professor Rancourt graded PHY4385/5100 without evaluating in an objective way. I'm paraphrasing and summarizing, but that's the way I would characterize the “as noted, in addition to”. So you have that out there, then you have number one, “he advised ... was not intending to give all students a grade of A+” – that's a reference to the fact that the initial letter sent to Professor Rancourt contained an allegation that he would give the students an A+ just for showing up. Professor Rancourt said, “that is completely incorrect”, and he took great offence to that. In fact, we're going to ask you to find that, based on the original accusation, Professor Rancourt was quite justified to take offence for that, and he said “I'm not telling my students they just have to show up”.

A: You're talking about the first letter?

M: Yes – he was accused of giving students A+'s just for showing up, and he responded that's not what he was doing.

A: Do you have the exhibit number for that?

M: I'll provide it to you. So that's number one. Number two: provided a letter of March 28 to students and characterized them as "ridiculous threats". Number three: "he made derogatory statements to students and disclosed confidential emails to them" – I'm not sure it's been proved that there was disclosure of confidential information. Number four: "he refused my request for disclosure of examinations" – now we know the University is not relying on that, but that allegation goes to the BoG of the University, and it is acted on by them, because nobody ever bothers to tell them either that the University is not relying on the examinations, or that the University has the examinations, because by the time the decision was made, the University had those documents.

So a central element of what was being decided by the BoG disappears. Before I get into the case law, and I intend to deal with the case law before I do the application of the case law to the facts, there's one other thing that I want to make reference to. The first question asked of Professor Rancourt was, "You're a self-described Anarchist, aren't you?" It's our view that that question and the discussion that ensued is telling of this case: the University sees Professor Rancourt as a person who makes waves – do you remember my comment earlier about understatement? -- Professor Rancourt explained that, in fact, there have been descriptions like that of him, and that he has accepted those descriptions, but the question was being asked in a way and with a tone that suggested he was an anarchist in the sense that he wanted chaos on the streets of the University campus, and what he said, very clearly, was that for him that's not what being an Anarchist was – that it was a political theory that dealt with principles of democracy and personal responsibility. He said that there is a popular impression of what he described as *anarchisme*, of believing in some of the precepts of anarchists that was just that – a misconception – and that he didn't accept that view of the political theory.

Something more important was something I skipped over just now. He said, "I agree with some of the concepts that anarchists have put forward over the years, but I don't adopt them all", and he talked about some of the concepts that he believed in. Professor Rancourt cannot be terminated, even if he is an anarchist, or a liberal, or a member of the NDP or Conservative Party or Marxist-Leninist, whatever, and the University is committed to upholding that principle. It must uphold that principle.

On that note, what I intend to do is begin the discussion of academic freedom and the way in which academic freedom has been examined and dealt with over the years. So I'd ask you to look at the "cases and jurisprudence" folder and the "academic freedom" folder. In particular,



if you can pull up “case excerpts on academic freedom”. The first case is the decision by the Information and Privacy Commissioner of Ontario, and again, the University and Professor Rancourt were parties – “academic freedom is of vital importance in our society... permits free flow of information... best lines of causes, issues, and policies, even when such debate and criticism may be unpopular.... interference ... government or public”. It goes on further, “it plays an essential role in our society”, and, so says the IPC Comm. “it is a value that I am delighted to uphold...informs”. In the next case you see another IPC case. “The collective agreement protects professor’s... without interference from the Employer, it’s agents... it exists independently of and predates the collective agreement... important principle in a democracy”. And picking up on this, “the relationship between the University and its academic staff is different from the standard relationship between an employee and the Employer because of academic freedom”. That’s the conclusion, accepting the submissions of the University of Ottawa. The next case excerpt that we’d like to refer to is the University of Calgary case, it’s a decision of the Alberta Labour Relations Board – picking up on a number of these themes, they say “it’s almost impossible to overstate the importance of academic freedom... core beliefs... society best served by free marketplace of ideas... universities have evolved... free inquiry and expression... academic staff receive compensation from institution itself, freeing them... scholarly activity, widely defined.... system of tenure protects academic freedom by giving academics security from arbitrary dismissal... by long tradition, close institutional control is anathema... tenure support academic freedom... noted early, whole concept of the university.... community of scholars.. advance the state of human knowledge receive an extraordinary freedom to define for themselves.. essence of the bargain.. university will not exercise control over the appointee’s scholarly abilities.. university unique as an Employer... basic bargain of academic appointment.. remain productive.. cooperate in institution’s needs... damage interests...misconduct”.

So, when you look at the general case law dealing with both termination for cause and refusal to reinstate, it’s that societal and collective agreement bargain that is the filter for determining what the rules are. It’s consistent with what we see in the C.A. at pages 39-40 “the University reserves the right to make rules that don’t contradict the C.A. but that bind the employee” – we’ll speak a little bit later about the whole idea of Satisfactory/Non-satisfactory -- Professor Rancourt used that in one of his classes, the University said “except in very limited circumstances, that is no longer available”. The University can, through it’s processes, say, “You must do this this way”. For example, “We are going to determine that student-centred learning and evaluation is prohibited as a method of teaching or evaluation”. The University can say that. Whether they would ever do that is a very different thing. They haven’t done that, even after Professor Rancourt went through his process, there is no such rule at the University, and I’d suggest to you, and APUO would suggest to you that that’s because of the very nature of academic freedom. In order for that to happen, what you would expect at an institution of the calibre of Ottawa University, and in case there’s any doubt that I’m using that in a negative sense, you are encouraged to find that Ottawa University is an academic institution with a reputation for excellence internationally – my friend didn’t start from that point when he said

what would happen to the reputation, but that's exactly what he was saying and we agree. In an academic environment of that calibre, in order to say, "You can't do this, you can't follow the current state of research in Physics Education Research", there would, one would assume, be a fairly lively debate – if the University at the end of that debate said, "This is just not allowed" – the University can make that rule, and Professor Rancourt must abide by it. There is no such rule.

This issue about transporting the standards of the shop floor to the University has been examined a fair amount, and the next case, the Langora College(?) case, bears that out. Where we see that the British Columbia C.A. Arbitration Bureau said that, "considerable caution must be exercised before transferring... and debate" – now, in this particular situation, you have a number of elements where there is an argument to be made that there are similarities with Professor Rancourt but, as we will be describing shortly, when you actually look at the way the Langora decision operates, you will understand that what this decision makes absolutely clear is that if a professor is attempting, in good faith, to explore the exact types of pedagogical research and evolution that we have before us, that professor is provided with protection from arbitrary action. The same is true of the University of Manitoba case, the excerpt of which you'll see right after Langora.

So we then get into some analysis about the University saying, "well, you know this is not the kind of person we want to have at the University" and you see the reference to Arbitrator Goodfellow's decision at York University. So where a breach of an employee's rights where academic freedom applies "university does not live up to... otherwise fall short of... employee ... academic endeavour.. taken to its logical conclusion... university could say or do what it pleases... employee was practically undeterred.. articles does not function in that fashion" – what it's saying is that the University has to act in a way that protects an employee's academic freedom even if the professor continues, after the discipline, in similar kinds of conduct. The test is whether the actions of the University are such that "... fortitude... not incumbent on Association.. enough to show that steps taken by University could reasonably be seen to have had that effect.. given case" – the decisions of arbitrators are that even actions of the Employer that might discourage people from engaging in pursuits protected by academic freedom are (? A violation of the C.A. ?) – so what happens if the professor says, "I'm not going to require students to write essays in my class – I'm going to grade in a slightly different manner" – and Arbitrator Simms, in the University of Calgary case, the 1999 one, says "if you're going to find something like that, you have to have a rule on behalf of the University that says that you can't do that" – not the desire of a particular department head, or chair, or dean, not the dictates of a Vice-Rector or even the President of a university – the university itself has to say "this method of evaluation is not allowed".

We've heard a lot about Arbitrator Picher's decision from the University, and about how Arbitrator Picher said, in his decision, and he did, that Professor Rancourt either knew or should have known that the way he described his course as bilingual or that there might be bilingual

course in rotating years (( )) – and at the time there was a letter that said, “you should be more careful in describing your courses to make it clear when they are bilingual or not”. It’s an exhibit in this case, for reasons that I can’t quite remember, but it’s also jurisprudence, and we would invite you to read it quite carefully. As I understand what’s being suggested, Professor Rancourt should have taken this as a censure of his academic squatting in the course in question. I’m going to suggest to you that you will not find that in Arbitrator Picher’s decision.

Let’s look at what you will find – this is the next group of cases: “a component of academic freedom... without undue influence from the University.. in advancement of research... professors may well report to... provocative communications.. extent that they are not unlawful or materially false and misleading, they should generally have the protection of academic freedom” – one might think about reading a letter from the dean and wonder, after what I just read, whether or not reading a letter from the dean about the course is prohibited by academic freedom? And the answer is no: it is protected by academic freedom.

Professor Rancourt was advancing some of the issues that you’ve heard about in the Physics and the Environment course – this was a course that had a societal aspect to it. Let’s look at what Arbitrator Picher had to say: “.... difficult for this arbitrator to conclude ... beyond bounds of academic freedom.. frame description.. his own account... intended to attract person who might... content and format... over the years... necessarily requiring... clear that academic freedom does not... radically” – I note the word “radically” – “depart from .. of course.” So Arbitrator Picher said that academic freedom does not allow you to fundamentally depart from the content of the course, but aside from that, there must be some latitude both in regards to the content and the teaching methods of the course, and Arbitrator Picher refuses to allow the University to impose a sanction for flexibility in teaching method and content in a course. The University was aware of this decision in 2008.

I’ll ask you to go down to the second reference to the Picher Award, because this is academic freedom in the context of the course where Professor Rancourt is accused of bringing in non-scientific people or people who spoke about things that had a relationship more to society than science – from page 56: “there is no suggestion that Professor Rancourt is not.. broader society... forgiven... Barnum and Bailey tone.” So Arbitrator Picher is saying that you don’t just have narrow rights under academic freedom, you’re actually entitled to prop up the course in order to attract students.

The Pridgen decision of the Alberta Court of Appeal relates *Charter* issues to academic freedom and says “freedom of expression... academic freedom is confined to professional.. in universities.. freedom to put forward.. unpopular ideas. .. jeopardy in the institution.. academic self-rule... academic decisions... more broadly... institutional autonomy ... academic matters.” “Academic freedom and freedom of expression are inextricably linked” – this must be kept in

mind when we speak about the idea of promoting not only the expression but the adoption of innovative methods of teaching and evaluating students.

We don't get anywhere near the facts in the Noble decision, but I'm going to ask you to go down further in the York University decision of Arbitrator Goodfellow. Now, in that case, there was an issue about whether or not a pamphlet could be distributed, and it's one of those cases where Arbitrator Goodfellow said it's at the margin of what could be called academic pursuits – it was a pamphlet that made some fairly scathing remarks, but what Arbitrator Goodfellow said was that you look at whether or not the communication or activity or whatever other element is in question to see whether or not it falls within the broad scope of his work and interests as an academic. And I don't intend to take you through all of what Professor Rancourt defined as the scope and interests of his work as an academic, but the one thing you can say without question is that innovating curriculum evaluation and instruction was at the core of his scholarship.

Human rights tribunals, including the HRTO have said that it should be very rare that they would intervene – even where there were allegations of discrimination – as far as the contents of what a person says during a debate on social, political, or religious issues within a university. That's how far the protection goes when we speak about academic freedom.

I've included in these cases, cases which made it clear that there are limits to academic freedom. I've already expressed one, which is if the institution itself makes a decision that a person cannot teach a certain subject matter, teach in a certain way, or evaluate in a certain way, it is our view that the employee of the University, the professor, must abide by that – if there is a formal requirement on the part of the University. And that is why that question was posed a number of times -- Professor Rancourt has said repeatedly, "if the course description says 'this is what must be taught' then I must teach this; it doesn't stop me from going beyond that or teaching in innovative ways, but I have to teach this material in this course".

We see that, in decisions going all the way up to the Supreme Court of Canada – and you'll see I've included an excerpt from the Kim (?sp) case: "professors must have a great measure of security in employment if they are to ... academic excellence which is the hallmark of the university... tenure provides... free and fearless... except in cases of flagrant misconduct... extremely difficult... tenured system always possibility... quite low". The Supreme Court of Canada is telling us that, yes, if there is flagrant misconduct, we can look at violating the principles of tenure, but you have to be very careful indeed when the issue is connected with a professor's view, after extensive research, of the best way to get students to learn a concept.

I want to refer to a concept that is very well known in labour law, and that is the concept of condonation.

A: What is that?

M: Condonation – condoning the behaviour of an employee. Professor Rancourt’s reputation as somebody who made waves did not begin in 2010, 2009, 2008, 2007, or 2006. He has been blogging in the same way – and we have excerpts – for a very long period of time. Where an employee engages in a course of conduct over a period of time, even in the absence of academic freedom as a concept, that employee has a right to at least expect that the Employer will say, “you can’t do that anymore”.

So, I’ll ask you to go into “condonation case excerpts”. You see the first case MacIntyre and Hawkin(?) but the official name is “1800s Horse and Buggy Law” – it has echoes in cases that have the same principles – I’ll ask you to look at the Air Canada and Kale case of Arbitrator Shum(?) where he makes it clear that arbitrators reject the notion of past incidences to support new discipline – “employee lead to believe ... reasonable” – and third, interestingly, “prior.. rejected.. kitchen-sink approach to discipline...all past incidences... limited number of cases.. thrown in everything possible.. bolster their disciplinary response... flows from a skepticism about an approach... something to be changed.” One of the best examples of that is, at the beginning of this case, unless we’re mistaken, no one said to you, “this case is not just about one course where Professor Rancourt gave A+’s, but about three courses” – there’s been an evolution in this case, and I’ll have more to say about that when we deal with the facts, but it’s part of the kitchen-sink approach: you start with “well, he did three things wrong” then you say “but there were a bunch of things last year and the year before” and then you say, “but he’s a bad person on top of all that”. Arbitrators rejected that, and for all the reasons set out by Arbitrator Shum.

The same is true in the decision of Arbitrator Philips in the BCEGU(?) decision – it’s cited by Arbitrator Philips in the Simon Fraser decision. “Arbitrators have long taken a jaundiced view.. neither formalized nor brought to the attention of the employee” and you see the two reasons, and they reflect the thinking of Arbitrator Shawn(?) “invites.. places little significance on the conduct... potentially prejudicial.. discipline could have been invoked... discipline.. but did not.”

So the question is, what exhibit is it, in which a representative of the University says to Professor Rancourt, before the termination, “here is the standard we expect for somebody that is blogging, and you go beyond the standard” – where is the suggestion that that formed part of the Employer’s thought processes leading up to the termination? Where is the thought process that says that the University takes the position that these blogs are inappropriate, before 2012? And the SKF decision is another decision of Arbitrator Shawn(?) – he repeats “if an employee is told ... receives a warning... may receive a suspension.. may face discharge” – that’s the reason why you don’t leave things dormant and then say, “but look at all this stuff he’s doing”.

I’ve included a folder on spoliation, in case there was a question, and spoliation is the concept of where you have a document and you know that it may be needed because it’s relevant to a case that’s coming up, and you delete that document. There can be a variety of

consequences, everything from adverse inferences up to, in very extreme cases, striking out entire claims. So I've put this in, I'm not sure if we're going to be getting to the level of formality where we're going to talk about spoliation, but it's coming in because Professor Rancourt was cross-examined about what was called a transcript, and he said, "it's not a transcript – there are parts missing at the beginning, at the end, even between some of the words" – he didn't say, "I adopt this, or it's more or less accurate" – there were some areas where he said, "yeah there may be some context missing, but it's more or less what I would have said". What we are going to ask you to find is that this document was marked as an exhibit subject to what Dr. Rancourt accepted was accurate. I think, although I'm not absolutely certain about what I say – I think Dean Lalonde wasn't even certain about who had done the physical transcription, but what we know is that it came from Maureen Robinson.

We know that Maureen Robinson is the person working on the university newspaper, hired by the University to create a false identity, to carry on surveillance on Professor Rancourt. We know that she had a grudge against Professor Rancourt as early as 2007 – we find that in exhibit 88 – and she tells the University this. We know that – in exhibit 86 – she makes the quite disturbing comment that she feels like "one of these police spying on pedophiles" – she doesn't use the word "spying" but that's the tenor of her comment – when she comments on using this false identity. We know that she has no compunction about lying to the editor of another university newspaper in order to get information, and she tells the University about this and jokes about it – this is exhibit 87. And, interestingly, to add to our list of people we've never heard from, she is conspicuously absent from the list of witnesses for the University. So – and she provided the transcript, she provided the audio recording. We know with absolute certainty that there is an individual who, if it is true, could have come before you and said, "that's verbatim – that's exactly the way I heard it, that's exactly the way I recorded it, that's exactly the way I transmitted it to writing". We haven't heard from her. We have Dean Lalonde, who had both the sound file and the transcript who can't say with certainty that he reviewed both, but he certainly had the transcript to review. We have counsel for the University, who had both. Dean Lalonde didn't say, "no that's accurate", counsel for the University didn't say "that's accurate" – in any event, none of these people – in particular, the person who – and I use the term loosely – the person who was hired to spy on Professor Rancourt – none of them came to substantiate that document, or anything else that was reported by her. To impose on Professor Rancourt the burden of that, or to suggest somehow that he is culpable of some misconduct before this arbitration, when those are the facts that you know, is not acceptable.

I expected we'd go to about 4:30 based on our discussions of the previous day.

A: Interesting day, I didn't see the time go by *(laughs)*. Tomorrow morning, 9:30.

*(End at 4:29 p.m.)*

# Lawyer defends A+ marks handed out by Denis Rancourt as lengthy hearing ends

BY DON BUTLER, OTTAWA CITIZEN    JUNE 26, 2013



University of Ottawa physics professor Denis Rancourt was fired for his decision to award A+ marks to every student in an advanced physics course.

**Photograph by:** David Kawai, Ottawa Citizen

OTTAWA — Two years and nearly 30 sitting days after it began, an arbitration hearing that will decide whether the University of Ottawa had the right to fire former physics professor Denis Rancourt in 2009 came to a close Wednesday.

Final arguments in the marathon case played out in a windowless basement room at the Indigo Hotel on Metcalfe Street with arbitrator Claude Foisy, as has been his custom, periodically stopping proceedings to refill the fountain pen with which he inscribed copious notes.

The university's board of governors dismissed Rancourt, a tenured professor with 23 years' experience, for what its lawyer, Lynn Harden, described Wednesday as "academic fraud" — his decision to award A+ marks to every student in an advanced physics course. Rancourt did the same thing in two other courses he taught, though that wasn't mentioned in his dismissal letter.

The university argued that Rancourt, a self-described anarchist, had defied explicit instructions from his dean, the late André Lalonde, to evaluate his students objectively.

In his closing argument Wednesday, Sean McGee, the lawyer hired by the Association of Professors at the University of Ottawa to represent Rancourt, maintained that the former professor in fact heeded Lalonde's instructions.

McGee said Rancourt's "pedagogical method" — which focuses on students' contribution to the class and their progress during the course — marks different things than exam-centric methods of instruction and evaluation. "He was grading them by different criteria."

The fact that they received higher marks than students in other classes doesn't mean they weren't objectively evaluated, he said. During the hearing, he asserted, "there was no evidence that there was a single incorrect evaluation."

McGee said a central issue was whether Rancourt told students in his solid state physics class, on Day 1, that everyone would get an A+.

Two students testified that he did, but another student, and Rancourt himself, testified that he didn't, McGee noted. He said Rancourt merely "expressed his expectation" that all students should be able to get A+ marks, he said, assuming they participated in class and made progress in mastering the material.

But Harden asked Foisy to "draw the inference from the incredible coincidence of all students getting A+ marks" that Rancourt did not grade them objectively.

McGee acknowledged that Rancourt's method of evaluation is "not commonplace. But that doesn't mean it's wrong or bad or against the university's interests." He said the university's response to Rancourt's method illustrated its deep resistance to change. "That's what this is about."

Raising a theme he emphasized throughout his closing argument, McGee said a professor's choice of pedagogical and evaluation methods is "core to academic freedom."

The association of professors argues that academic freedom is at the centre of Rancourt's case, and it protects many of the things he has done, including comments posted on his blog attacking the university's policies and officials.

McGee acknowledged that Rancourt posted a headline on a blog item about Marc Jolicoeur, a former chair of the university's board of governors, that was "factually incorrect" and "inappropriate". But he said Rancourt intends to change the headline and "ensure that the article is accurate in all respects."

The blog item about Jolicoeur was one of several examples Harnden cited to support the university's contention that Rancourt shouldn't be reinstated as a professor even if Foisy finds the university didn't have just cause to dismiss him.

McGee likened that to the university inviting the arbitrator to reach the "contradictory conclusion that there are no grounds to fire (Rancourt), but he should be fired nonetheless."

He also defended other comments by Rancourt raised by Harnden, including his characterization of University of Ottawa law professor Joanne St. Lewis as university president Allan Rock's "house Negro" for concluding there was insufficient evidence to support allegations of systemic racism at the school.



Far from being a racist slur, McGee said the term house Negro is used by blacks to described fellow blacks accused to selling out their own race.

Not only does academic freedom protect the expression of such opinion, McGee said, the comment was typical of the freewheeling criticisms Rancourt had posted on his blogs for years without attracting complaints from university officials.

Harnden agreed Rancourt's case engages academic freedom, but in a different way.

"If you endorse how this professor conducted himself, that would represent a threat to the credibility of the principle of academic freedom," he said. "The principle of academic freedom does not protect the right of professors to engage in academic fraud."

Rancourt, he argued, had used his students as pawns in his own pedagogical experiment. "He gave them a grade they knew in their own hearts was unjustified."

When he submitted the A+ marks, "it was a fraudulent act no different than a business that misstates its sales figures to mislead investors," Harnden said. "That is not what academic freedom is designed to protect."

Foisy's decision, which will be binding on both parties, is expected to take several months to deliver.

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Wednesday, June 26, 2013

*(Continuation of Union's closing arguments)*

M: Just in terms of a road map for today, what I intend to do is speak, first about the employer's argument for deciding essentially that if there is grounds for discipline but not grounds for discharge that you should nonetheless not put Professor Rancourt back and I intend to outline why APUO believes that is not a request you should grant. Then I intend to get into the facts for the purpose of analyzing whether there is in fact an argument that Professor Rancourt deserves discipline at all. I expect that we will take a good part of the morning, but I still think we're on track.

So, the notion of refusing to reinstate: all of the arbitrators made it clear that this is a request for an extraordinary remedy. It is a remedy that is being asked for that essentially says, "although we didn't have the grounds to terminate, and although the Union member had a protection that essentially said, 'you will not be discharged unless there is just cause' we can't put this individual back to work – it's just impossible". The basis for that cannot be "we don't get along very well"; I don't intend to repeat my arguments about academic freedom, but I will now tie those arguments into this concept. There are cases that, in a non-university setting, talk about the fact that an employee just isn't capable of learning, that he doesn't have the right to go about criticizing his Employer. I think you can take judicial notice that Employers hate that: they see an employee who goes about constantly criticizing the Employer, as demonstrating an enormous lack of loyalty. The cases on academic freedom say, without question, "you have the right to criticize your Employer. Cases like McKinney arguably say, "you have the obligation to criticize your Employer" in a general sense. That obligation and that right is put into even greater relief because a number of the cases that have spoken about being about the admission to tenure process being one that is done by the peers of the university professor. People have said, "well look, you're asking my colleagues to make a decision against somebody who is their department head, or their chair, or their dean". There's a reasonable apprehension that they're not going to do that. So goes the argument. And that argument has been categorically rejected, and one of the pillars for the analysis that leads to rejection of that argument is that academic freedom makes it clear that people who have tenure – so the members of the committees – have the right and not only have a right but feel secure in criticizing their Employer, their immediate supervisor, and their managers all the way up the line to the senior echelons of the university – it's the reason why peer evaluation and peer promotion selection works.

We put that in the context of what Professor Rancourt did up to the date of his termination, and he was asked a series of questions to which he responded about his blog, and he gave a very complete answer. This will be in the material that we provide to you, so I'll go through it quickly. But, what he said in his answer was "beginning in 2007 I made several stinging criticisms of university administrators, and I'd like to give several examples –

Patry... ..Lalonde... June 2, 2007..... July 7, 2007 Christian Detellier...access to information... language was severe... used the words “lied and falsified” ... that was the beginning of the blog”. So, to summarize, Professor Rancourt identified about eight or ten, or a couple more, instances where he was engaged in quite pointed criticisms of the university. And what he says afterward is, “the university never asked me to change the content of my blog. They never held an informal conversation with me about my blog not being appreciated or needing to be changed”.

You’ve had dozens, probably dozens, of these blogs referred to that he wrote prior to his termination. Professor Rancourt was not disciplined for the content of these blogs – he was not contradicted by any other witness. There was not any kind of warning about changing the kind of content of his blog, let alone a reprimand or any kind of suspension prior to his termination. This is not behaviour that Professor Rancourt was hiding. In fact, Professor Rancourt said to the University that he viewed this activity as part of what he saw as his output as a tenured professor at the university. So he said it was part of his work output, and he was required by the C.A. to tell the University about this every year. I’m going to make a reference that may be meaningless, but this reminds me of a moment in the film *Casablanca* where the Chief of Police is closing down a bar and he says “I’m shocked there is gambling in this bar” and then a waiter comes up to him and says “your winnings sir” – for the University to say that Professor Rancourt’s behaviour is the kind of behaviour that you cannot allow of an individual, and it is so significant that in spite of the fact that there is no just cause for termination, you should nonetheless not put him back in an academic environment is certainly an unreasonable request in the light of what I have just said. The only thing – one of the questions you might ask yourself is “well, the University may just not have gotten around to saying something to him about these” – but the interesting thing is, they did, because there’s one element that he put into his annual report that he said was part of his duties as a professor, that the University didn’t quite agree fell into that category, and that’s the *Cinema Politica*. Because what they said was “no that’s not really part of his duties as a professor” and so there was a question about how you grant Professor Rancourt University facilities if it’s not part of his course duties. So the University did see fit to deal with an element that was in his annual report that they did not view as being connected to his responsibilities in research, course delivery, etc. The parties disagreed about that, but in the end the *Cinema Politica* went forward.

We saw yesterday, decisions about condonation, and particularly the decision of Owen Shime where he said “if somebody engages in activity for a period of time” – and here we’re talking about years – “and the Employer doesn’t, at the very least say ‘you can’t do that’” – never mind a letter of reprimand, or two week suspension, or six month suspension – what Arbitrator Shime said is that “the employee can be left with the impression that this falls within the acceptable range given the circumstances in the workplace” – and when you deal with a workplace in which substantial protections of academic freedom persist, if the Employer is going to say, “this kind of behaviour, this kind of blogging, this kind of accusing people of having altered documents or falsified things or lied – you can’t do that – that’s not within the

range of acceptable behaviour” – you at least have to have that discussion before you come to the conclusion that there is no possibility of a return to work.

There is an option that the University has to say – one of a number of things, the first thing is the University could say “you can’t criticize the department head or the dean” or something like that – I would think that there would be a very significant debate about that, that if it wasn’t remedy would probably come before an arbitrator, because it’s very clear that you’re entitled to do that – it’s also clear that you’re entitled to say things that are upsetting, to criticize with vigour, to criticize in ways that are troubling, that’s part of what’s protected by academic freedom – and you can’t say “well, you can criticize the Liberal Party of Canada with vigour and in ways that are upsetting, but you can’t criticize the University or the dean or the department chair in ways that are vigorous and upsetting” – it is true that there has to be some kind of equilibrium, but there is no suggestion, we would argue, that that equilibrium cannot be achieved. Professor Rancourt said over, and over, and over again, “I want to sit down with you and I want to talk about my marking system. I want to do that outside of the inquisitorial system that you use only for me. But I want to talk about this” – so the argument that’s not available to the University is that Professor Rancourt refused to discuss things that were of concern to the University. That’s one of the critical elements that take us out of the jurisprudence like Longara College, where the professor simply refused, categorically, to engage in this kind of discussion. Professor Rancourt asked for it, and the University, and in particular, Dean Lalonde, refused it. I’m going to be speaking about this when I speak about the Solid State Physics course – Dean Lalonde refused it, understanding that Professor Rancourt was saying he wanted to sit down and have a discussion, and Dean Lalonde said it because he said that he did not believe Professor Rancourt wanted to sit down and have a discussion, in spite of the offers. When you do that, you do that at your peril, and I know that at the time that he said that, there was a considerable amount of ill will toward Professor Rancourt by Dean Lalonde, and that they – I don’t mean by that to suggest it was all one sided – and that they were involved in something that appeared to approach quite a personal disagreement.

So that’s the background and then we look at the allegations put forward in order to tell you you can’t reinstate. That is, you’re being asked for what is, in many ways, the contradictory conclusion – that there are no grounds to fire Professor Rancourt, but he should be fired nonetheless. The central theme that the University used is that Professor Rancourt is a bully. We had days of evidence on a whole series of things that occurred and allegedly occurred both before and after Professor Rancourt’s termination that have not formed part of the Employer’s argument as to why Professor Rancourt should be terminated. As a result, I don’t intend to address any of those things, but I will address the elements raised by the Employer.

The first one is the reference to the blog about Marc Jolicoeur. The headline in a blog about Marc Jolicoeur that was posted post-termination is factually incorrect and inappropriate and Professor Rancourt should remove it. What he said in his evidence was that when you read the content you understand what is being said. I believe that is a fair

summary of his response. He did not deny that the headline is inaccurate and it is inappropriate for him to have that headline as part of an article or a reference to a finding in the context of the return to campus. If Professor Rancourt, in the context of the cross-examination, had said anything about removing the document in his evidence, the argument would have been “oh that’s all very convenient” – but we’ve had a discussion with Professor Rancourt, a discussion that we weren’t entitled to have while he was being cross-examined or before reply, and I can undertake, on behalf of Professor Rancourt, that he intends to change the headline and to ensure that the article is accurate in all respects. That is, regardless of the outcome of this arbitration.

The next item was the posting about Ms. St. Lewis. Professor Rancourt explained what was meant by the expression that he used, and what he said was that since the 1960’s, and since the term was used by Malcolm X, that expression has had a very specific meaning in the context of political discourse, and what he explained was – and I’m going to paraphrase – that it is a phrase that means that you have, in your actions, become a mouthpiece for those in power, in the context where the issue is discrimination against an ethnic minority. So the use of that expression can be objectionable on one of three grounds, I believe, or all of the three grounds, in an appropriate case.

The first possibility is that it is a demonstration that you are a bigot putting bigoted views about an individual into a public forum. The interesting thing though is that it is a criticism that is adopted by black people – it is generally perceived to be a criticism adopted by one member of a black community and levelled against another member of a black community saying, “you’ve sold out, you’ve become part of the apparatus” – it must be remembered that this criticism was levelled in the context of a report that said there was systemic discrimination against person’s of colour where the professor in question had simply said “I don’t think there’s enough evidence to come to that conclusion” – I’m simplifying, but I don’t think inappropriately. And so the first question is “is it the sign of a bigot?” and the answer is that this is actually a term that’s used by black people to speak negatively about other black people. It was suggested – indirectly, I believe, and I apologize if I’m wrong about this – I think it was suggested to Professor Rancourt that using this expression was the same as using what is euphemistically referred to as the “n-word”. And he took great offence to this, and said, “if you’re calling me this, my spouse and my children” – who he identified as people of colour – “would be quite astonished”.

So there’s a second possibility, which is that using such an expression is inappropriate because it is a very direct and biting criticism of an individual. It is. It is for all the reasons that Mr. Harnden raised. It is nonetheless a criticism of the approach that someone took to analyzing what had been perceived as a problem for, at least the black community, at the University of Ottawa, and we would argue that two factors come into play – I won’t deal with the second one because I want to talk about the third category – but certainly, the protections of academic freedom allow you to say “you appear to...” – let’s assume that Professor Rancourt said “this professor appears to have done the bidding of the administration, because there was a

clearly identified problem, and instead of addressing it they said ‘well, I just don’t think the research goes far enough’ and in doing that, she appears to have abandoned her principles and maybe even her community” – we would argue that is protected by academic freedom.

The third category is that one could argue that this kind of comment on a blog is inappropriate for an employee in the circumstances. And there we have not only the concept of academic freedom that comes into play, but also that this is how Professor Rancourt communicated, without intervention by the University, for years.

The comet. Dean Lalonde assumed that Professor Rancourt had taken the picture that he had been given and used it on the Internet. “I had given him,” said Dean Lalonde, “this picture, and this was a private personal gift during our friendship, and then I found that he had taken that thing I gave him and put it on the Internet.” In fact what Professor Rancourt had done was to go on the Internet, and found this on the Internet, and put it in his posting. Professor Rancourt and Dean Lalonde by this time are clearly not getting along – that would be an understatement – Professor Rancourt proposes a meeting to discuss concerns that Dean Lalonde has, and Dean Lalonde says, “I wasn’t even going to sit down with him because I didn’t believe that he wanted to discuss this” – what is clear is that the relationship between Professor Rancourt and Dean Lalonde had broken down absolutely and completely. That we can say. If Dean Lalonde was still dean, you could understand the friction that would be involved in returning Professor Rancourt to his employment, but Dean Lalonde stepped down as dean in the months – he finished his tenure in the months following his evidence. Professor Rancourt talked about why he had put that image, and there is nothing in his evidence that indicates that it was, in any way, bullying. There was no reference to the comet anywhere in the material he posted. To any casual observer, it was a simple image, and we would invite you to find that it is absolutely likely that Professor Rancourt would include such an image in circumstances where there was a feeling of “we used to be friends”.

We heard that there was a request that in the context of what Professor Rancourt was experiencing related to Professor Nathalie Des Rosiers, and so Professor Rancourt had concerns about the way in which certain events had occurred and how those were compatible with the positions that would have to be taken by the CCLA, the Canadian Civil Liberties Association. For the same reasons that I’ve already raised, that is the combination of academic freedom and the fact that, to the knowledge of the University, this is the way Professor Rancourt saw his being able to exercise his academic freedom – those communications don’t say it is impossible to contemplate a successful return to professorial duties.

And that brings us to the central question in this phase which is “can you conclude that, in the context of this hearing and what all the parties have done in this hearing, and in the context of labour relations, Professor Rancourt would go back to work and disobey his Employer – so let’s break that out: the first question is “did he disobey his Employer” and I’ll be speaking about that. The disciplinary record before you is an admonition that was settled on by

Arbitrator Picher that Mr. Rancourt had to be more careful in describing the language requirements for his course.

It is a letter of warning. Usually when an Employer says that an employee has a long history of refusing to obey direction, the Employer says, “here are the examples of the times we have brought it to the employee’s attention, and of the employee’s failure to respect direction and then once he understood the consequence of the failure to respect direction, the progressive discipline that was used to make it quite clear what the consequences were to fail to respect direction, and then the one final incident where the Employer is allowed to say ‘that’s it, that’s enough, we gave him warnings, we told him how to act this way, and he acted that way’” – the Employer doesn’t rely on any of that, because it can’t.

What you’re in fact being asked to conclude is, Professor Rancourt, if he had been given – let’s just pull something out of the air – if he had been given a six month suspension because he refused to change his approach to blogging, and if that was upheld at arbitration, and not grieved, whether Professor Rancourt would nonetheless say, “I don’t care, I’m going to continue to do this” – that’s the argument, it hasn’t been put that way, I believe, but that’s the argument the Employer must make – and I’m going to ask you to find, first of all that there has been no progressive discipline – it’s conjecture – he was not disciplined for his blog, he was not warned about his blog, he was not disciplined for any of the kinds of behaviours that you are now being asked to find prevent him from regaining his tenure, which raises the last point that I want to speak about before going through the facts in the three grievances. Society doesn’t grant a professor tenure, the University in conjunction with the peers of the professor grant him tenure. You can’t go to another University and say, “I’d like to apply for a teaching position, I have tenure, so please consider that as part of my application”. What you do is you say, “here’s my output,” and if the University says, “you know what, we don’t like people who rock the boat at our university – this is not a boat-rocker university, so we’re not going to give you a job” – there is nothing Professor Rancourt can do about that. That’s what tenure is, it says “within the confines of the institutions, you have the right to rock the boat” and as I said, I think it’s open to you to conclude that the courts and tribunals, all the way up to the Supreme Court of Canada have said “you have an obligation to rock the boat. Society wants you to rock the boat”. But for Professor Rancourt, saying for him “we’ll give you wrongful dismissal type damages – we’ll give you some money to go away because we can’t reinstate you, makes it extremely difficult for Professor Rancourt to have a career”

H: Like, you I don’t interrupt very often, but as part of our agreement not to delve into communication, I consciously did not go into communication by Professor Rancourt about his employment prospects, so I don’t think it’s fair to get into the impact on his career.

M: I’m not doing that in terms of the damages issue – and this is useful to have this discussion – but one of the things that the cases on non-termination speak about is the impact it can have generally.

H: I'll tell you what is on his blog on that subject. I think I should tell you that and that may alter your approach.

*(Lawyers' break in foyer)*

M: I'm content to leave – my friend is right, I believe that we in the main decided that we would deal with the particulars around the issue as a second phase, so I'm content to leave it and disregard that.

So with the elements that we've spoken of – the issue of the criticisms, even something as plebeian as using an expression like “douchebag” – there is not an indication that Professor Rancourt can't learn. And the reason for that is the University has not gone down that road – whatever the reason for the choice that was made not to go down that road, it did not do so.

I'd indicated at the beginning of this that we were reserving the right to rely on a number of elements of bad faith – the Employer has not raised a number of things that we had originally anticipated it would raise, and as a result of that, it's our view that it simply serves no purpose to explore all of those areas of bad faith. We will highlight five elements of it.

The first is that the University hired a student to spy on Professor Rancourt, was aware she was assuming an alias in order to do so, that she lied in order to get information on Professor Rancourt, that they did so in a context where that person expressed early on in the process that she had a grudge against him, and that she said she felt like a police officer trying to catch a pedophile. It's just not appropriate for a university to behave like that, particularly in circumstances where the University refuses to even sit down and have an informal discussion with the professor regarding his views.

So that's the second, is the refusal of the office to sit down and informally discuss the issues. The third is reliance on behaviours that were, as we've just highlighted, were behaviours that were known to the University, in the form of blogging, and known before the termination, and were the subject of no discipline. We heard that when students came forward to express concerns about some of the course content of the Solid State Physics course, they were told that marks were frozen in other classes, and even Dean Lalonde said that was inappropriate. And finally, the failure to revise the facts that the BoG had before it that formed the very basis for the decision when representatives of the University knew that the reality of the situation had changed.

It might be a good time to take a break.

H: Can I just confirm – so that means I don't need to respond to initial allegations of bad faith, for example, the closing of the laboratory?

M: That's correct.



H: The ban from the campus as well?

M: We're limiting ourselves to those issues mentioned.

A: We'll break for 15 minutes.

*(Break at 10:59 a.m.)*

*(Continue at 11:15 a.m.)*

M: So, after what probably seems to most of you like an eternity, I'm going to get down to what we actually brought this hearing together for, which is the three core grievances. And I'll hopefully be more focussed and more succinct because, what this thing is about at its heart, does not appear, on its face, to give grounds for discipline. I'm not going to repeat the arguments that I've made about academic freedom, but the choice about pedagogical method and evaluation are core to academic freedom. Again, I don't intend to take you through the promotion and tenure provisions of the C.A. – they are long and sometimes could be best described as byzantine – you have to do a lot, you have to prove a lot, you have to be accepted by your peers as having accomplished a great deal to get tenure – that is true in most academic settings that are in universities. It is very true at the University of Ottawa, as evidenced if, by nothing else, the C.A. And so it's important, as you're reading cases, if you're looking for directions, to note when an arbitrator has said, "Well this person, having tenure, and having had it for a long time – that is a full tenure professor – is very different from a person working on a shop floor or an instructor in an academic setting" – it's with that background that we'll look at three courses – the first is SC11101 – it is designed to be a course that looks at science and society. It went through many iterations before a few brief weeks before it started, it got the approval of the University. There was a comment about an email that Professor Rancourt circulated during the summer prior to the start of this course, and I think it deserves some comment. I think it was suggested to you – I can't remember the words exactly – but Professor Rancourt agreed that this was what he was going to teach in the fall, and he agreed that this is what he had taught – that's paraphrasing it, but it's simply not what this email is about – this email is about a course that's still in development, and nobody knows if it's going to be taught yet – and if you review your notes you'll find that Professor Rancourt did not say that this is what he would be teaching, but rather that it was a correspondence about the course. Dean Lalonde writes him an email and says, "We've just become aware of this, and we're concerned" and Professor Rancourt writes an email back to Dean Lalonde. I'm going to invite you to take a look at the notes of that exchange very carefully, because when the University says, "Professor Rancourt doesn't acknowledge wrongdoing, or he doesn't understand when he's done something that might be wrong", I find that one of the more telling moments in the hearing, because he's asked to explain his email in response to Dean Lalonde, and he asks, as he did on a number of occasions, to read the document, and he says, "you know what, I was upset at the time – I was upset because it looked like once again the University was tracking my emails, and I drafted a

quick response and I sent it, and I drafted it while I was upset and sent it while I was upset, and I'm looking at it now and I regret having sent that email when I did – it wasn't appropriate, and I would word it differently now” – and there was a moment where he said, “but you know...” and he stopped himself, and he said, “no, that was just wrong” – he was thinking “there's a background to this” – I'm assuming he was thinking this – he was about to offer a background but then he says “no, that was wrong” – it was a moment of the kind of introspection of which the University says Professor Rancourt is incapable. But of course he is capable. So, during cross-examination, after Dean Lalonde said that it was his view that the course content had not been followed – I cross-examined him at length, and I said to him “if you'd had this speaker, and tied it into this, and had that speaker and tied it into that, and ensured that there be transitions from society to science, and vice versa, does that comply with the course description?” and he agreed that it would. Professor Rancourt, then gave evidence that he had done exactly that and not a single person came before you to contradict him. Of all of the people in that course, not a single person came forward to say, “no, no, no, that's not what Professor Rancourt did” – and you could say to yourself “this is 7 years after the fact, it's very convenient to offer this explanation now” – well, let's look at exhibit 25. On page 1, which is at the bottom, called page 7 of 16 – at the bottom of that page, we see a description “workgroups... had titles... science society action... agriculture.. GMO's.... most popular groups... science enterprise... conflict... gender discrimination... motivation... “ then he says “regarding my choice of invited speakers...as you know I'm a scientist... represent societal context in some of its complexity... interacted with each speaker.... extensive discussion... asked questions and made comments... moderated.... as a scientist... topic of the day.... other topics and areas.” And then he talks about the people who spoke “David Noble, arguably... Richard Saunders....and physicist” and so on.

So, Professor Rancourt in the winter of 2006, says, “Dean Lalonde, this is what I did” and in my cross-examination, what Dean Lalonde said was, “If he did this, he was respecting the course description” – and Professor Rancourt said, uncontradicted, “this is what I did”. Professor Rancourt was asked about academic squatting, and first we have to remember that this whole notion of changing the course was already considered by Arbitrator Picher, but what Professor Rancourt said was “the stuff on academic squatting didn't apply here – we got the course we wanted – we don't need to squat within that definition – and he was very careful about his definition of what squatting meant – he said “here we got what we wanted and wanted to offer it year after year” he said, “the course description is what I wanted to teach” and the only evidence before you – the only evidence – is that he followed the rules. He said it was very difficult to get the course to the point where it accurately reflected what the students were looking for when they were getting it established, but he said once it was that he gave the course as is.

PHY1722. This is a point where it's probably useful to talk about Professor Rancourt's pedagogical method, and as he said, his grading system is integrated into that method. Professor Rancourt talked about grading different things. Not grading things

differently, grading different things. And this is where things break down between the University and the APUO – what the University says is, for example, “there were two physics courses taught, one in French, one in English, and the marks were incredibly different” – and what the means, says the University is that there was no objective grading in 1722. There is an assumption that you have to make in order to assert that, and in order to succeed in proving that Professor Rancourt acted inappropriately – you have to assume that the two professors are marking the same things – they’re evaluating the same things. Because it’s true that if you’re evaluating exactly the same things, it would be unusual to have such a high discrepancy between one course and another – you can’t expect identity, and what Professor Rancourt said was that there wasn’t any coordination between the kinds of marks being given – but what Professor Rancourt said was “I reviewed the students’ progress and contribution to class” – he went on and on and on about how he was evaluating different elements. So you have one professor who was doing what Professor Rancourt said he was doing, and you have a second professor who, presumably, is doing a classic evaluation, and what is a classic evaluation? Well, this is the answer to the question that was posed by the University yesterday – “this whole thing about 60%, if there’s anybody who can explain that...” – well here’s the answer: Professor Rancourt said “just because you rank-order students based on a sampling done on the class doesn’t mean that you’re adequately evaluating what the students have learned – what you’re evaluating is whether or not the student did well on the exam-- so does a student who got 60% understand 60% of the material and a 90% student understood 90% of the material? – he said “physics students don’t learn that way” – so we’re back to the uncontradicted evidence that learning doesn’t work that way, what happens is that some of them work really hard in order to obtain a high mark in the classic grading system, at the expense of learning the material. So what Professor Rancourt said was that he wanted to use a different system. He said that in the course of that evaluation, he found that the marks were significantly higher. But what the University is asking you to do is to jump to a conclusion without an intervening factual foundation. Look, marks are higher and they’re different than in any other class, therefore Professor Rancourt didn’t objectively evaluate.

The first thing is, Professor Rancourt said “this is what I did – I had midterms, projects, a final examination, I marked them all – I had TA’s who were doing the marking of these, and in the end, these are the results that it produced” – and there is not a shred of evidence that he did not do that. I asked Dean Lalonde whether or not he knew of a single person who got a mark that he didn’t deserve – a single one – and he said he didn’t know of any such person. Professor Rancourt said “I will never give up my right to control my classroom if somebody’s taking advantage of it” and what he said was that there was an individual, somebody who was a scientist, who was a student, and that person had exaggerated views of the marks he should get in class. And Professor Rancourt said it was obvious that he was not understanding the material and not doing the work in order to do so. Professor Rancourt said he had to sit down with him and say, “This is not working – you’re not doing what is expected of you” – and they had a debate – this was not a student who would accept this easily – but in the end, Professor Rancourt said “I had to give that student a C”. Now, we have to remember that this is in the

context of Professor Rancourt saying publicly, “I don’t grade” – what he said he meant by that is “I don’t rank-order for the sake of rank-ordering” – but he said he doesn’t give up control in the class.

A: Just a second, you said “he doesn’t grade”...

M: Yes, in the sense of rank-ordering. What he said was, “I will not give up control of a class”. There was no evidence that there was a single incorrect evaluation of any of the factors used by Professor Rancourt – there was no evidence that entering into a contract with students, the way he said he had, contravened any University rules. The evidence makes it clear that where somebody didn’t deserve a high grade, that person did not get a high grade. In the same way as SC11101, there is no cause for discipline.

PHY4385/5100, which we’ve also called Solid State Physics. There are a couple of issues related to this course, but the central allegation is that Professor Rancourt did not objectively evaluate the students. First, it was uncontradicted that in upper level and graduate level physics courses, it is not uncommon to have classes in which most people get A’s. The second thing is that you heard reference to two other classes in which all of the students got high grades. Professor Rancourt received no comment that those assignments were inappropriate. There was a complaint that one student made about course content – course content is not the subject of any dispute before you today. The method of teaching in 4385/5100 is not the subject of the debate before you today. But students go in and they make this complaint about the way the class is being run, and in fact it was one student and then followed by another based on a problem that was encountered. And Professor Joos, who was an administrator, tells this student – and Dean Lalonde, as I said, agreed, improperly – “ah well you know, we’re withholding those marks – he did the same thing in another course and we’re withholding those marks” – and the University wants to tell you that Professor Rancourt used the students. What student V said, when I asked him “what would have happened if he had not been told that?” was, “well it’s really hard to know” – it’s hard to know because that’s what set up the problem – and so, a second student comes in and says, “I heard that you’re withholding these marks from another class – is there gonna be a problem with my mark in the solid state course?” The University did not have a right to withhold those marks, and it did not have a right to incite that reaction in students.

So then we’ve got an issue that I thought was probably the core issue in this whole arbitration: did Professor Denis Rancourt tell his class that they were all getting A’s, full-stop? Did he promise them A+’s at the outset of the course? You have student V who couldn’t remember the words, but said that it was his understanding that they were all going to get A+’s. You have the second student that I was speaking about, who I would submit was much less certain in cross-examination, and in fact was left saying, “well that was the impression that I had – that we were all going to get A+’s” but he could not say that Professor Rancourt had not said at the beginning of class “I expect you to all get A+’s”

You have the testimony of Philippe Marchand – I’m going to suggest to you that Philippe Marchand came across as a very honest witness – it’s true that he was involved in discussion groups with Professor Rancourt and that he supervised some of his graduate activities – it’s also true, as you saw in the emails, that there were times he had pretty significant disagreements with Professor Rancourt. But I’m going to suggest to you that he came across as an independent-minded witness, doing his best to describe what occurred in that class. He testified that Professor Rancourt did not ever promise that everyone was going to get an A+. He was quite forthright and said he couldn’t give a verbatim recollection, but he said with certainty that Professor Rancourt did not promise everyone an A+, and that what Professor Rancourt did was to give a broad explanation of his, of how he intended to cover the material and how he intended to evaluate, and he expressed his expectation that they should all be able to get an A+ in the course. He expected them to get that. That’s consistent with Professor Rancourt’s words.

Professor Rancourt said that he went into the class and he outlined all of these things and he made it clear to them that he was grading them using different criteria. He said that part of it was their participation in class. He said that they had to bring the course material to class and they would have discussions about that course material. He spoke about the fact that the final exam could be oral or written, and that everything was open to discussion, but that his evaluation would be over the course of the year. He described the fact that his personal experience and his academic reading made it clear that allowing someone to pull an all-nighter – he didn’t use that expression but that was the sense – to study very hard at the end and pull out a great mark did not encourage the kind of learning that you needed in upper-level physics, and so he was going to grade people differently – if you want that mark, you’re going to have to participate all the way through. And he said he did that, and he said he, a little bit like the first course, he had one bump along the road with two students, and what he was required to do was intervene and say to them, “look, this is not going to work” – and he said it was a significant intervention. One of those students was the second student who had gone to see Professor Joos. Professor Rancourt said he needed to intervene in order to ensure that that student was learning at the level that he expected, and that the person did in fact do that – he turned it around and ended up being one of the people who was bringing the course material and the result of his work into class -- Professor Rancourt spoke about that in the context of his evaluation, and in the end Professor Rancourt said “my evaluation was that he deserved that mark”.

I’m going to ask you to turn to the excerpt of cross-examination of Dean Lalonde that I have provided you. So when you try to find out whether or not what Professor Rancourt was evaluating was inappropriate, this stretch of cross-examination is, I think, most telling, because what Dean Lalonde says is, “Yeah but they all got A+’s! They all got A+’s” and originally he said they were going to get A+’s just for showing up for class, and Professor Rancourt said “you’re wrong, that’s insulting” then Dean Lalonde said “they’re all going to get A+’s regardless of their performance” and Professor Rancourt said “you’re wrong” and Professor Rancourt said on more than one occasion “let’s sit down and talk about this”.

So this is the exchange that I had with Dean Lalonde – “you’ll agree that small tests could be a component as opposed to midterms and exams... can you use different methods, answer: yes.... intellectual growth.. can’t expect bright students... grade must be proportional to the students ability to understand... so you don’t have individual names of somebody... no... was there any study?...no...”

We then got into a discussion about Professor Rancourt and the formal meeting. And this is where Dean Lalonde spoke about a tiramisu (?sp). And then at page 4, I ask “during this time do you understand that Professor Rancourt...last paragraph of that document Professor Rancourt says “can we meet” answer: “I don’t believe he was sincere. question: “interesting because...I remember her having serious doubts about radical pedagogy.. “ – so he goes to the Dean of the Faculty of Education – how can you do that?! How can you admit a moment earlier that you didn’t understand the academic underpinning of this approach and then immediately go and ask someone about it – and I think the answer is this is just two deans having a chat – “question: did you know answer: I did not do any exhaustive... commonplace” – that’s absolutely true, Professor Rancourt would be the first to agree this was not commonplace – but whether or not it’s commonplace does not mean that it’s bad or against the students’ interests – that’s the allegation that the University was making – this is different – there’s a joke about how many people in the University does it take to change a light bulb, and the answer is “Change? We can’t have change!” – that’s what this is about – these methods are not commonplace – “question: and if I say, for example, at least one faculty at the U of T has expressed concerns... aware of that? Answer: no I’m not... you were asked a question.. components were.. when we received the final exams in 2009, I think... a few days before the final decision on the dismissal before the BoG.... what was the problem with the marking scheme? I can’t recall the details of what was on the sheet. What was the problem with the marking scheme? I can’t even remember what it said on the sheet” – that’s when the University learned – that moment, a day or two before the BoG is when the University said it learned what the marking system was, the evaluation system was, and in cross-examination, they can’t even remember what it was about – and in case there’s any doubt, “can you recall any specific problem in the marking scheme adopted by Professor Rancourt? No. Question: you saying your evidence that Professor Rancourt skillfully said “they” would get an A+ if they attended class – do you know of any document anywhere that says they would get an A+ based on attendance. Answer: no...” – I show him exhibit 48, where he says exactly that, and I say to Dean Lalonde “so it’s not a misunderstanding, that is what you told him. And the answer is: yes”

Professor Rancourt said that his evaluation method was “you can’t do a sprint in the final days before the exam: you have to come to class and demonstrate you’ve done the work, that you have an understanding of the material – you have to participate, that is you have to demonstrate – and that is what I did” – there is no evidence that he failed to conduct that evaluation. Professor Rancourt has said throughout that he believes that the more traditional approach of rank-ordering students and the more traditional approaches to pedagogy, including

the last minute sprint final exam, do a disservice to students who want to have an understanding of the principles of physics. No one has contradicted him that that is a unreasonable approach to pedagogy. Professor Rancourt stated categorically that he had evaluated students in the Solid State Physics course throughout the term and what he did was, when he found a student who was not achieving the level of excellence expected of them, he intervened to ensure that they got back on track. No student said “I didn’t deserve an A+ because my learning wasn’t at that level” We have to remember that the University accepts that there is no bell grading system in science, there is no mandatory mean or median mark, a professor has a right to assign all A+’s, and is given latitude in the marks that are assigned. What Dean Lalonde said was “you’re entitled to do all of that – you can give the whole class A+’s – but you have to evaluate those students objectively”. APUO and, for that matter, Professor Rancourt, couldn’t agree more. On that we have no dispute. He says he never promised A+’s irregardless of performance, he says, and I would argue quite credibly, that he would never give up his ability to say to a student, “I told you everybody would get A+’s but you’re just not cutting it” – I would say that, even based on the picture as the University of Ottawa portrays it, that would be inconsistent with the character of Professor Rancourt.

I’ve provided you with two cases – I agree with Mr. Harnden that this is not a case where on grounds of termination (( )) – it is by and large a factual dispute. I’ve given you (*names cases*) but I don’t intend to – there are case excerpts in the our written arguments submitted to you.

So what we can take from this? Well, Professor Rancourt said that one of the things that he evaluated was the progress of the students, and whether or not a student challenged him or herself. That factor alone would mean that if you used a traditional didactic method of evaluation and Professor Rancourt side by side, it would be surprising not to have differences in the evaluation. Because, a brilliant physicist who chooses to just coast in Professor Rancourt’s course would not get as good a mark as you would expect, and a student who needed to do a large amount of personal research and have a lot of contact with the professor and who made enormous progress in understanding basic concepts of physics, would do much better in Professor Rancourt’s course. And this is one of the factors taken into account by Professor Rancourt – so you can’t make a comparison. The assumption that the course content is the same so the marks must be same couldn’t be further from the truth. And I don’t say that from Professor Rancourt’s point of view, I ‘m saying that from what Dean Lalonde said was absolutely permitted in the variations in things that you could evaluate in the course. If one course had participation and another different, you’d expect the marks to be significantly different, and there are other examples.

So I want to wrap up – we start with the premise that Professor Rancourt did not promise everyone an A+ in the course regardless of their performance. We ask you to conclude that doing so, in addition to being contrary to the evidence that’s before you, would be entirely inconsistent with the evidence that’s before you. We ask you to find that Professor

Rancourt invited representatives of the University on several occasions to sit down and talk this out. We would ask you to accept the evidence of Mr. Marchand, a credible and forthright witness who said that Professor Rancourt never promised that students would get such a result without objective evaluation. We ask you to find that Professor Rancourt did conduct objective evaluations of the students, and satisfied himself that they deserved that mark based on the criteria that, according to the University itself, he is allowed to adopt. We would ask you to make the same finding, based on the same discussion that I had with Dean Lalonde, with respect to the marking allegations in the first year physics course, 1722. Dean Lalonde said there is no maximum mark, there is no bell curve – he said the same things for that course. And in respect to SC11101, the allegation is that Professor Rancourt didn't follow the course description, and the only evidence before you is that he did exactly that. We would ask you to find that, in terms of conflicts, yes there are some – anybody who has done any work in an academic setting knows that conflict is sometimes pervasive, because people challenge each other's ideas constantly, and that is perceived as common, but that Professor Rancourt was never told before his termination "there's the line, and you've crossed it" or "there's the line, don't cross it" as far as his blogging and public postings, and that the evidence before you is that in regards to Professor St-Amant - Professor Rancourt was questioned about that – that was one where Professor Rancourt was saying that "we have to have a safe and healthy work environment" – there was a similar situation where Professor Rancourt believed himself to be the target, and what did he do? He filed a grievance – he took the normal route for resolving a dispute foreseen in the C.A. and he talked about what he thought a university environment to be supportive and in the extent possible, free of inappropriate comment. We would ask you to find that, of the five elements that the university has raised in support of an argument against reinstatement – first of all, if there are no grounds for discipline, you can't bootstrap yourself into saying "yeah there were no grounds for discipline, but don't put him back" – we would ask you to find that yes there are things that you can say to Professor Rancourt "that was really not appropriate, there was the line and you crossed it" – but they no where near approach the level where it would be necessary for you to come to the conclusion that Professor Rancourt cannot, as he as asked to do numerous times, sit down with the University and say "Ok, let's work out the ground rules" and if they can't, the University has the power to say, "Even if you don't agree, these are the ground rules, these are the limits, it doesn't matter what the majority of people in Physics Education Research say, you're going to do your courses this way and you must comply" and if he fails to comply, the University can take disciplinary action against him. The University similarly can say "either this is where the line is in terms of your blogs, your academic freedom doesn't go beyond that, and if you go beyond that, we will take action against you" and if he fails to comply, the University can terminate him as part of the normal process that's envisaged by the C.A.

Professor Rancourt wants to come back and teach physics, and after your review of all of the evidence, we are suggesting to you that he should be allowed to do so. Unless you have any questions, that is all.



A: Ok, we'll break for lunch, at what time will you...?

H: Just an hour will be fine.

A: Ok, so let's say a quarter to two.

*(Break for lunch at 12:41 p.m.)*

*(Continue at 1:59 p.m.)*

H: I was just going to raise the subject regarding the written submissions. I notice you use the technique of putting some of the transcript and other documents aside to go beyond your 12 pages – I may go beyond my 12 pages.

M: By a little bit over, you're talking about under 50 or 60 pages?

H: Oh no, no – the page limit has kept us constrained to something less than 50 or 60 pages and that's fine. All set?

A: Yep.

H: The Association this morning placed a great deal of emphasis upon the principle of academic freedom and how it impacts on this proceeding, and they talked about it's vital importance in the university environment, and the University of Ottawa is completely agreement that it's vitally important. The Association cited from the University's comments in IPC decisions, and we don't resile from those comments at all. The University would not claim that it has a right to censor Dr. Rancourt in terms of him advancing his views either on a public blog or in a public forum about pedagogy, and including any concerns he has about pedagogical practices of other professors, other institutions, nor does it take issue with him sharing his ideas around innovation in relation to pedagogy. He can go down to Queen's or wherever he wishes to talk about his research activities and share his ideas, and he can blog about his research, he can advance criticisms of the University, its administrators, that's all within – either it's characterized as freedom of speech or academic freedom, but that's what creates a rich university environment, and professors should have a significant freedom in that regard, but from the University's perspective, this case engages academic freedom but not in the way the Association would submit – we say that if you endorse, in your decision, how this professor conducted himself, that would represent a threat to the credibility of the principle of academic freedom. It would besmirch that concept in the university community and to the society at large – there are obviously people watching this case, be they students or parents of students, people looking at how this university conducts itself and what kinds of behaviours are allowed in the university environment. To put it another way, the principle of academic freedom does not protect the right of a professor to engage in academic fraud. In fairness to the Association, I'm confident they would agree with that proposition, they just take issue with whether or not academic fraud has been proved in this case.

Now, the numerous statements around academic freedom that the Association has pointed to will always talk about the concept in glowing terms, but there will always be a limit in terms of what it embraces. There are always references to activities outside of the protection afforded by academic freedom. In that regard, the McKinney case at the SCC, and I'll give you the excerpt and citation – the judges there at page 376 describe, first of all how academic freedom serves a vital role in the lifeblood of the university – something that both parties agree on – and they said it was intended to protect against the “censorship of ideas” – that's an important protection, but you can see that in their eyes, that focuses on ideas. In fact, when you see their words – “while I believe that the concept of academic freedom.... focuses on ideas” – so the SCC saw it as having narrow focus – “... government..” – I would say there's an analogy to administrative control within a university – in that context there's a decision from the University of Calgary which speaks to that point – it's in the Association's materials. I'll quote from it – “as we noted earlier... scholars... supported.. institution or both... general... receive an extraordinary... doing that” – wonderfully well articulated – “the very essence... control over... “—and these are important words “scholarly activities” – “these make.. basic bargain... academic appointment” – and then they give examples “appointee remain productive... cooperate.. misconduct” – so that's what they carve out, in the words that they use. We say that this professor has not fulfilled the basic bargain of his academic appointment, and that he engaged in the serious misconduct that damaged the University of Ottawa's interests, just as contemplated by the Alberta Labour Relations Board's decision. And our thesis for what occurred here – it's worth revisiting – we say this was a professor who sought notoriety for what he was doing with his pedagogy – he wanted and yearned for attention for those ideas, and his thirst for that attention was so great that he breached a fundamental obligation, which was to evaluate students in an objective manner.

Now, he could have discussed his ideas about pedagogy and said, “these ideas merit research” and he could have been a proponent of conducting research on those ideas in an academic setting. But just sharing ideas isn't enough for Dr. Rancourt, he needs more attention than that – and so what did he decide to do to get that attention? He decided to conduct an experiment with his own students as subjects.

M: We agreed we would not be going there. I didn't bring it up in response because we agreed we would not go there.

H: I understand we considered that and elected not to, but to characterize what occurred as an experiment, I don't think that's a breach of our understanding. We're not suggesting it was a scientific experiment. Whether or not you characterize it as an experiment, what was notable was that it wasn't enough that he, in his wish to have pedagogy that didn't involve ranking – it wasn't enough to say “you're all going to get a B at the end of the course” – that wouldn't attract enough attention, that wouldn't be notorious – you had to assign the ultimate mark of A+ -- that would get attention. And if you have any feeling that I'm exaggerating, I commend to you exhibit 152 and the French version is 153, where you'll see in

2009, after his dismissal, he's still out there in the community, bragging on the air waves about giving A+ -- this is his badge now, this is how he gets the attention he has been seeking. And in doing so, I have to concede, he did succeed -- he attracted, through his behaviour, not only national but international attention, and it brought national and international embarrassment to the University of Ottawa. But when you reflect on what he did, he used the students in his class as pawns for his own ends: he gave them a grade that they knew in their own hearts wasn't justified -- now to be fair, we didn't hear a student say that, I'm saying that you can take arbitral notice of that reality -- the fact that two students came forward and talked about it, notwithstanding the natural attraction of getting an A+ at the end of the year is just so revealing.

We say that when he submitted those marks to the University it was a fraudulent act that is no different than a business which misstates its sales figures in order to mislead investors. That type of action is not protected by academic freedom. Similarly, taking Dean Lalonde's letter to him, expressing concern about his approach to grading and reading that out to the class and ridiculing the dean, that is not what academic freedom is designed to protect. It's absolutely designed to protect a professor who wants to share controversial views with students, to invite dialogue around those views, but to take a letter from an administrator at the University who has a legitimate concern about what's going on in that classroom and attempting to convince the students that he was right, that the dean and the University were wrong was nothing less than what I would call an insidious action in light of his knowledge that there was going to be litigation around his conduct. And his tactic didn't work: one of the students in this classroom came here -- notwithstanding what Dr. Rancourt attempted to accomplish in that classroom -- and came here and testified about what occurred. So, as I say, that's not what academic freedom is designed to protect.

Now, I want to make some comments on the personal audio tape to respond to the Association's comments. The Association, and their submissions adopted the same strategy that Dr. Rancourt did in his evidence -- let's change the subject, let's not talk about the personal recording let's talk about the University's tape. Now notwithstanding that the University was very motivated to produce its tape in this proceeding, that does not detract from the grave conduct of Dr. Rancourt -- you've seen the transcript, you know why: he really didn't want you to hear his words. And so you say, and the Association suggests, "hey, isn't it conceivable that he accidentally deleted it or just forgot about it?" -- but when you reflect on that, please review exhibit 151 -- not every word, it's a 22 page document -- but you can tell from its contents it's Dr. Rancourt's pride and joy -- he's going on a great length about his activities and what he's called surreptitious activities of the University -- and he reaches the climax at page 9 -- and you'll see he puts a great big asterisk beside it and says "and now my conclusion" and he puts this big asterisk there and says "there's a transcript of my remarks by the University and I can prove it by my own personal voice recording" -- now just reflect on that -- that's his piece of ammunition to show what the University was up to, and somehow it's disappeared and we can't get to hear it. It was the linchpin in his document in this case against the University.

Now, it's interesting that the Association refers to the law around spoliation. I can tell you we gave consideration to bringing a motion to ask you to deny the grievance unless Dr. Rancourt produced that audio recording. And the case law the Association's referred to but it would have been a tough argument, particularly in a dismissal case. So instead we elected to simply say to you as I'm saying now: consider the absence of that audio tape that existed in January 2010, when this hearing was in the offing, and why it isn't in front of you today when you decide if this gentleman has any credibility.

Now, some of the other points made by the Association – why didn't we call the student who made the transcript? This goes back to reading your transcript of Dr. Rancourt's evidence in cross-examination when he referred to the Queen's University transcript. I'll just give you an example – there were six or eight instances when I pressed him on words – when I said “are you saying you didn't say those words about grades” – his answer in the transcript was “no, that's not what I said – the words that were there were probably what I said” – in fairness he said there was some context – but why would we call a student to confirm the words she typed, when he confirmed them himself.

Now, I want to turn to the Association's comments on condonation – the principal point is the University didn't direct Professor Rancourt to stop blogging before he was dismissed, and therefore we condoned it. As you are well aware, the University did not dismiss Dr. Rancourt for the contents of his blog. Its references to blog materials were principally blogs made post-dismissal which, in our submission, were relevant to the remedy of reinstatement. There's in fact relatively little evidence on your record as to what Dr. Rancourt blogged pre-dismissal. There's some record of it, but most of them are post-dismissal. And as I said earlier, the University respects the freedom of a professor to state controversial views in a public forum such as a blog or elsewhere. It is the nature of the post-dismissal blogs that we say are not protected. We say that when you look at them as a package, President Rock, Nathalie Des Rosiers, Dean Lalonde – you can readily conclude that it was a blatant campaign on the part of Dr. Rancourt to gain revenge, after his dismissal, on those who were involved in the dismissal. And as I touched on yesterday, it wasn't just an attempt to defame them, to criticize them, he consciously set about to think about where are they most vulnerable? “where can I hurt them the most?” – as I said yesterday, Nathalie Des Rosiers – I'll write to her board of directors – Dean Lalonde – I'll write to the mineralogical association – what does the min. assoc. have to do with his dismissal? He just wanted to hurt Dean Lalonde as deeply as he could. We say that that sequence of blogging is of a different character than a university professor criticizing a university administration, a fellow professor, we agree with the Association that there is leeway there to be offensive – we're not in the censorship game – but when you're looking at, as an arbitrator, whether or not this is an employment relationship that has any possibility of being repaired – you can look at those blogs and the audiences that he consciously sought out.

And I didn't mention Marc Jolicoeur and the remarkable event that Dr. Rancourt seems to have finally got it that what he did to Marc Jolicoeur is utterly indefensible.

But recall that we made the same submission in 2011 when we gave you particulars of what we called post-dismissal conduct. There wasn't any revelation this year on that issue – it's been out there since 2011. I suggest that Dr. Rancourt when he's finally realized that maybe his dismissal just might be upheld, there's a conversion. But I suggest to you it's a little late for him to give you that single piece of proffered – or evidence that he can act properly, in order to try to desperately hold on to his employment. In fact that decision that was reported to you this morning, we would submit works against Dr. Rancourt – it simply emphasizes that the posting, which was utterly unfair to an individual who volunteered to be the Chair of this institution – had the misfortune to be in that role when Dr. Rancourt was dismissed -- Dr. Rancourt through his saying, "oh I better take that down" is just confirming that he knew how grossly inappropriate it was. And I commend my friend for his efforts in attempting to navigate through the offensiveness of Dr. Rancourt calling Professor St. Lewis Allan Rock's house negro. I'm sure I don't envy that task. And I'm sure the references about Malcolm X will be of great interest to the trial judge, but fortunately you don't have to decide if that comment is defamatory. If one could use a man on the street as a measure, I think we know what the conclusion would be – but your task is to decide if making that comment, putting it on the Internet, leaving it there in the face of a lawyer saying to take it down – what does that say about the individual – publishing a comment like that that he knew would hurt – any individual, let alone someone with the intelligence of Dr. Rancourt – knowing that would just sear her – what does that say about that individual and about the appropriateness of reinstating him to work alongside her? So all that to say that condonation is not a concept that we think is applicable, as he wasn't dismissed for pre-dismissal blogging.

Now, I want to turn to the allegations of bad faith, which were reduced but still remain on the table. And the principal allegation – I don't know if it's principal, but one of the allegations – is the University hired a student to spy on Dr. Rancourt. And on that subject, let's go back to Dean Lalonde's evidence – he was asked by Mr. McGee "did you engage the student to do surveillance on Dr. Rancourt" and he said "no that's false" here are his words, and I'll submit them in writing "we hired" – I'm not using her name – "as an archivist to put order in the voluminous.... newspaper... emails.. concerned that all of these... classified... task of .. binders." Now, there's no question that the student expanded her range of activities beyond what Dean Lalonde described in that evidence – I think that was his initial vision and for whatever reason her activities broadened. Part of that was that she was Editor in Chief of the student English language newspaper – so she had a journalist's hat on as well as doing this assignment for Dean Lalonde – but she did do things like take a fictitious name to get on a website, to see what Dr. Rancourt might be saying to students – no question about that – whether she was doing that as a journalist, or as an employee – no doubt the University was aware of it – and you talk about condonation, well they condoned it. And so the question is, "was that evidence of bad faith by the University" – let me explain why I say it wasn't: in fact, it was very appropriate given the very trying circumstances that existed at that time. Dean Lalonde described the situation at that time period that he was dealing with Dr. Rancourt and his supporters.

We're responding to a bad faith allegation here – I'm telling you why the university was willing to hear from this student about what she was able to here. Here are Dean Lalonde's statements – he said, "It was preventing me from sleeping at night.... responsibility... harassment... avoiding coming to work.... unlivable... associates came with cameras and intimidated... " – if you cast your mind back to the beginning of these hearings, you'll get some sense of what he was talking about. He mentions Marc Kelly, Joseph Hickey, coming in with cameras – he was embarrassed to have a lock on his office door – "intercom... staff concerned... took my responsibilities very seriously.... violent incidences known to occur... seek advice... discussing this on several.. psychiatrist... Bradwejn...medicine" – now Dr. Rancourt, in the face of that evidence says "ah, Dean Lalonde, exaggerating the situation, nothing I did would support any of those fears", and the dean tried to explain to you why his thought connected to Dr. Rancourt – he described a situation, which was reported to him, in which Marc Kelly went into a class...

M: I'm going to object – we're in reply. We specifically avoided a whole area related to violence, etc. – I would have gone on much longer if you were going to get into what you are doing now – this is not reply, this is a new argument, and we cannot go there.

H: In the typical sequence, bad faith – I told you at the conclusion of my initial remarks yesterday – I had submissions to make on bad faith but wanted to hear what the Association put forward – I'm responding to that. I did put forward that the closure of the laboratory is off the table. But I thought this was still germane because you might be drawn to reflect on "what made a student go onto these websites and see what was being exchanged between Dr. Rancourt and students" – and we finally got the emails from Mr. Marchand and we see what was being exchanged – so for Dean Lalonde to not tell her "I don't want to hear what's going on on those websites" – he was fully justified – this professor was out there telling students to light bonfires and break doors.

M: Objection!

A: I agree with Mr. McGee so please proceed with your argument.

H: Now I'll turn to decision of the exams and the BoG – the exams were eventually submitted by Dr. Rancourt – they were referenced in Dean Lalonde's recommendation for dismissal – a couple of comments on that. First of all, the record is that the exams were requested in June 2008 – they're handed in on March ##, 2009, which is five days before the BoG was scheduled to consider the matter. The Dean's recommendation for dismissal set out the grounds – that framed the recommendation – it wasn't something that was properly amended, and Dr. Rancourt was put on notice that it was going to the BoG and he had ten days to make submissions if he wanted to do so. But let's just think for a moment, given the evidence in this proceeding about the content of the exams, would it have really worked in his favour? I appreciate that's total speculation, but you can draw your own conclusions – but more

importantly, from a legal perspective – the law is very clear that this proceeding is a proceeding *de novo* such that any issues of what you might characterize as procedural fairness are cured by the fact that there is a *de novo* hearing, and that proposition was confirmed in the Toppel decision that has been provided to you – it’s very brief – the Federal Court of Appeal said “assuming there was procedural unfairness, that unfairness was wholly cured by the hearing before the adjudicator” – so it was wholly cured, there is no prejudice to Dr. Rancourt given that he couldn’t have had a more complete opportunity to make your pitch to a third party called upon to have a hearing *de novo*. Now there’s numerous decisions applying the Toppel reasoning, we given you two: (*names case, paragraph*) and the Mass decision paragraph 118.

Now, I want to turn to some comments that I think what Mr. McGee said yesterday regarding letters from the dean about grading. Exchange of letters between Dean Lalonde and Dr. Rancourt and the first letter was exhibit 48, where the dean says to him “look, did you promise these students A+ if they attend class?” -- Dr. Rancourt writes back, at exhibit 49, “I’m very very offended by this – it’s based on rumour, I want a retraction of your bold accusations” – now the honest answer would have been more along these lines, based on the evidence we heard, which is corroborated by Dr. Rancourt’s description of the talk at Queen’s – he should have said – “look, I told them they’d get an A+, that’s the mark I said they’d get at the end, they also could write the midterm or exam, although they don’t have to, and that they should participate in class, but anyway they would get an A+” – that’s the honest answer – that’s what the students said to you that the understood. Instead, Dr. Rancourt seizes, obviously on the fact that the information Dean Lalonde had picked up to the point wasn’t entirely accurate – it’s true that it wasn’t solely based on attendance – but his decision to complain about the exchange of correspondence in those two letters is a bit hollow, because he didn’t disclose what was really going on, and as Dean Lalonde explains, the timing of that was extremely important because this was towards the end of the school year – Dean Lalonde says this was true and the professor says “no, it’s not true, it’s offensive, what do you mean!” and Dean Lalonde says “don’t give every one of those students an A+” – the message was crystal clear – and does it really assist that Dr. Rancourt is absolving himself of responsibility because of the tie to attendance? I think it’s a rather feeble way of defending himself in the circumstance.

Now, there were extensive submissions in response to our submissions about declining reinstatement – I said my piece yesterday. But in the Chomier case at paragraph 15 that was presented, it examines the type of evidence that an arbitrator should look to when making that determination –

A:                               What paragraph?

H:                               Paragraph 15 in the Chomier decision: “tentatively able... principles” – it was one of the excerpts that Mr. McGee provided to you. What’s notable is that the arbitrator suggests there should be a distinction drawn between post-discharge conduct and pre-discharge conduct. And here’s what’s interesting – I’ll go straight to paragraph 4 – “generally evidence of

pre-discharge.. determination not to reinstate” – that’s an interesting proposition – in terms of the various weights, you should look at post-discharge conduct, and the reasons I’m drawn to it of course is that was the position taken by the University in this case to support it’s argument to not reinstate. In terms of pre-discharge conduct, there was the petition, exhibit 156 – initially 52 of Dr. Rancourt’s fellow science professors, I think it dropped to 48 later – we obviously pointed to that as evidence when you have all of those professors unhappy with this gentleman and whether reinstatement’s appropriate.

Now, I’d like to turn to a proposition that was given some emphasis. Will Dr. Rancourt disobey the University if he’s returned to work? There was some attempt to convince you that he will meekly return to the workplace and all will be smooth and no difficulties will occur. I remind you of a few things: this is the professor who received a warning in October 2007 about evaluating students objectively, and every student he evaluated between that date and his dismissal got one mark. That’s what a warning does to this gentleman. And if you seriously think that if Dean Lalonde had given him a five day suspension that it would have been any different? Absolutely not. Michel Picher upholds the disciplinary warning – at least a component of it, in fairness – and what does Dr. Rancourt do? He trumpets it as a great victory for his academic freedom – he really learned a lot from that experience. And it’s one thing to have his Union’s legal counsel say he’s going to change his ways, but far more important than that is “did you discern a hint, even a hint, of that possibility in his evidence?” I grant you Mr. McGee was willing to point to one example where he was perhaps willing to change his words – when I heard that evidence I saw no indication he wouldn’t do it again next time, I just saw that he was embarrassed. Another way of looking at it is when you read the evidence, see if you see any part where he says he did anything wrong, including the post-dismissal conduct – excluding today, when he agreed to take down the blog post about Marc Jolicoeur.

We’re moving to G-14 now, exhibit 14. Just in terms, for your clarification, there was some reference to a letter from Dean Lalonde exhibit 15 from Dean Dabrowski(?) and he was the individual who received an email that described the course in a manner that didn’t seem to talk a whole lot about science. Dr. Rancourt in exhibit 16 – that’s where – no, exhibit 17 where Dr. Rancourt says yes it relates to the new course SCI1101 – he sent that letter to Thomas Moon on August 6, 2006, who was the acting dean. Your task, in our estimation, is to weigh portions of the evidence – we want you to emphasize the evidence around Dr. Rancourt’s agreement that exhibit 17 accurately described the course. The combination of exhibits 16 and 17 are what tell the story here – we also ask you to weigh what Dean Lalonde said, and in fairness there wasn’t evidence about all the content of that website, but he looked at a student website and said “didn’t see anything about science there”.

Dr. Rancourt was a proponent of academic squatting – against that of course is Dr. Rancourt’s evidence that “no, of course, we didn’t need to squat that course”. There’s a point on academic squatting, and I’ll hearken back to academic freedom – you’ll recall the petition, exhibit 156 – one of those professors’ complaints touches on – this colleague,



referring to Dr. Rancourt says he “boasts publicly about being a squatter.. his attitude not only derisory... contravention of article 9A of C.A.” and they say, and this is telling, “in addition by acting in this manner, this colleague has no regard fro the academic freedom of others.... peers.. curriculum” – that’s their reaction, they say “this colleague has no regard for our academic freedom when he does this” quite telling when that many members of the science faculty react like this.

Now, in terms of the second warning that’s before you: G-15, exhibit 32, that’s where the allegation is of the inflated marks.

A: I’m sorry to interrupt you – just take a note, that I just noted on my list of exhibits, a document which does not seem to have been marked as an exhibit, but it’s dated 16-08-07 and it got mixed up in my own numerization of the documents.

H: Ok, we’ll check and make sure.

A: You were talking about a second warning, exhibit 32.

H: Yes, that related to grading and the Association would have you understand that Professor Rancourt’s approach which yielded this dramatic increase in the grades of the students was because he was grading different things. Of course you have to reconcile that with statements he made a few weeks earlier at Queen’s saying “I have not graded any of my students since” – we don’t know whether he graded different things, we just have his statement that he wasn’t grading and that the marks took this incredible bounce that just defies anybody’s common sense. Now Mr. McGee made a masterful effort to give some veneer of credibility to this remarkable result in this course – and if you didn’t know this professor was someone who was bragging in his community, you might be convinced, because there were a few outliers – very few – and when you’re reflecting on this there’s one more reference to a statement Dr. Rancourt made at Queen’s “I still don’t do that and they’ll have to take me to court to take that away” – just think about that: this is the same professor who the Association would have you believe is going to return to the University environment and do what is directed to him. Now, I close with reference to the grounds for the dismissal. First of all, I want to clarify that the Association is quite right in saying, “look, Dr. Rancourt was dismissed because of giving A+ to the students in Solid State Physics and yet the University keeps referring to the fact that he gave A+ to the students in two other classes” and we’re not trying to expand the grounds, what we’re saying to you is when you make a determination of Dr. Rancourt’s credibility when he says “I graded those students in 4385/5100 objectively, and miraculously, every last one of them deserved an A+ grade” you can quite properly weigh, in assessing the credibility of that statement, that even more miraculously, in two other courses, everybody got an A+ -- is this gentleman telling the truth? Obviously not, if we apply the least amount of common sense to that.

Now, it's abundantly clear from the record that the University investigated complaints of students. Students complained, Dean Lalonde investigated. And of course you can take arbitral notice that not many students are going to complain about getting an A+ on their transcripts. But students did complain and then the Association says "the only reason they complained is the rumour that the marks were being frozen" – I'll refer you to the student complaints, exhibit 2 and exhibit 9 – they give rich detail about what caused them to complain to their dean – and it really is a remarkable proposition that these two young men would go to their dean and say "this is not right" notwithstanding that they would get an A+. And then the Association wants you to put some weight onto the evidence when Dean Lalonde concedes he doesn't have names of students who didn't do the work that justified an A+. One can just imagine how a dean could go about obtaining that kind of evidence, and it's just impossible to picture – does a University, in a situation like this have to call a student before you to say "look what I did, I don't deserve an A+" – that's not something you want to do to a student, and I don't think the Association would believe that's appropriate – there is no question we are asking you to draw an inference – and that's what Dean Lalonde did, he drew an inference from the incredible coincidence of all those students getting an A+ mark – and that's the evidence, that's sufficient evidence, we say – we don't have to come before an arbitrator and say "look, Mary only learned this" although in fact you did have insight into some of the students' contributions, and that insight must have made you even more skeptical. One of the bad faith arguments was the University's and the dean's refusal to meet Dr. Rancourt and have a lovely heart to heart discussion about pedagogy – let's look at exhibit 60 – that was a meeting, a formal meeting and you'll see how open Dr. Rancourt was to discuss pedagogy and sure it would have worked out better in an informal setting – once you read that you can draw your own conclusion.

The bulk of that submission was to say to you "there's no evidence that Dr. Rancourt didn't grade objectively" – our response to that are his own words. I'd love to play you his own words if we had his audiotape. And you hear the words of two student witnesses who say the only grade he talked about was A+. And then the most incontrovertible evidence of all was that every last mark was the very same mark that was mentioned on the first day of class. And so you have that evidence, and you weigh that against Dr. Rancourt's evidence, which we say lacks credibility and you such reach one conclusion: that the dismissal was amply justified. The Association made a point right at the outset saying that the University's not like a plant floor or a factory, and I say that it is in this respect: that the Employer doesn't have to tolerate, in that setting or in a University, a lack of integrity or honesty or insubordination – that's what the evidence is here, and that's what we ask you to find.

A: Thank you very much for your collaboration throughout this long process. And as discussed, I will get back to you about the timing of the decision.

*(End at 3:25 p.m.)*

